CONSTITUTION, BY-LAWS and RULES OF ORDER

OF THE

Worcester Typographical Union

NO. 165

ORGANIZED DECEMBER 11, 1885

15

1954

THIS CONSTITUTION IS
PRINTED
ON UNION LABEL
WATERMARKED PAPER

PREAMBLE

We, the printers of Worcester, in order to concentrate our efforts for the general welfare of those who are employed in the art of printing, and to preserve the rights of all persons employed as aforesaid, deem it advisable and necessary to establish laws which shall govern our craft. We, therefore, do enact and declare for our future government the following:

CONSTITUTION

ARTICLE I

Title, Jurisdiction and Objects

Section 1. This organization shall be known and designated as Worcester Typographical Union, No. 165, existing by virtue of a charter from the International Typographical Union.

Section 2. The jurisdiction of this Union shall be in accordance with the laws of the International Typographical Union.

Section 3. The objects of this Union shall be the procuring and maintenance of a fair and equal rate of wages, wholesome sanitary conditions, the encouragement of good work-

manship, a charitable regard for the sick and disabled, and the employment of every means which may tend to the elevation of printers in the social scale of life.

ARTICLE II

Membership

Section 1. Any practical printer (which shall include any one who is directly engaged in the printing business, either as a compositor, machine operator, machinist, machine tender, tape perforator or proofreader, male or female) who has worked not less than six years at the business and is a competent workman in the branch of the business which he or she follows, may become a member of the Union by making proper application, and complying with the requirements of the Constitution and By-Laws.

Section 2. Beginning with the second year of apprenticeship, apprentices shall be enrolled in and complete the International Typographical Union Course of Lessons in Printing before being admitted as journeymen members of the Union. Upon request, the Union shall advance the sum required as payment for the said tuition, the apprentice to repay the Union within one year. Apprentices shall not be considered as journeymen until they have received certificates of graduation from said course.

Section 3. Every person admitted as a

member of this Union shall be introduced to the President by the Sergeant-at-Arms. The candidate having thus been presented, every member of the Union present shall rise and remain standing while the President administers the following

OBLIGATION:

I (give name) hereby swear (or affirm) that I will, in good conscience, and to the best of my ability, comply with and perform the Duties of Membership of the International Typographical Union, all of which shall in no way interfere with any duty I owe to God or my country.

Section 4. The candidate having taken the obligation, the President will continue:

In the presence of this Union I now pronounce you a member in good standing of Worcester Typographical Union, No. 165. May you prove faithful to the cause of which you have become a champion. You will now be conducted to the desk of the Secretary, where you will append your signature to the Constitution and By-Laws of this Union, and thereupon become entitled to all the rights and privileges which that instrument confers upon its members.

Section 5. The candidate having signed the Constitution, the Sergeant-at-Arms will introduce him by name to the Union, and then conduct him to a seat.

ARTICLE III

Officers of the Union

Section 1. The elective officers of this Union shall consist of a President, Vice-President, Recording and Corresponding Secretary, Secretary - Treasurer, Sergeant - at - Arms, a Reading Clerk, three Trustees, three Auditors (one to be elected each year for a term of three years), three Delegates to the Allied Printing Trades Council and five Delegates to the Central Labor Union.

Section 2. These officers shall be elected annually on the third Wednesday in May, by ballot, and installed at the regular meeting in June. Preceding the election of officers of this Union, and for delegates, the presiding officer shall appoint two suitable members (subject to a decision of the Union, provided any member shall object) who, in conjunction with the Secretary-Treasurer, shall act as judges of election. It shall be their duty to receive the votes, count them, and deliver a true return to the presiding officer, who shall declare the result of such vote immediately.

Section 3. Nominations for elective officers and delegates shall be made at the regular meeting of the Union next preceding the date of election, and shall comprise none but those who have been members in good standing for six months immediately preceding

such elections. To qualify for nomination for elective office or delegate a member must have attended four of the nine regular meetings immediately prior to nominating meeting date.

Section 4. No person shall be elected an officer or delegate of this Union unless regularly nominated, as above provided, and shall have filed with the Secretary-Treasurer of this Union notice of acceptance of nomination not later than the third Monday of May.

Section 5. In all elections for officers of this Union, when there shall be more than two candidates for any office, the candidate receiving a plurality vote shall be declared elected. This section shall also govern the election of all delegates.

Section 6. No member of this Union who does not hold a current working card shall be allowed to vote.

Section 7. Previous to any officer-elect entering upon the duties of his office, he shall give assent to the following obligation:

"You pledge your honor that you will, to the best of your ability, perform the duties devolving on you as an officer of this Union; and that you will, in the position assigned, act for the general interest and benefit of its members."

ARTICLE IV

Salaries

Section 1. The President, for the faithful discharge of his duties, as set forth in Article V, shall receive the sum of $198.00 per annum.

Section 2. The Vice-President, for the faithful discharge of his duties, as set forth in Article V, shall receive the sum of $18.50 per annum.

Section 3. The Secretary-Treasurer, for the faithful discharge of his duties, as set forth in Article V, shall receive the sum of $804.00 per annum.

Section 4. The Recording and Corresponding Secretary, for the faithful discharge of his duties, as set forth in Article V, shall receive the sum of $105.00 per annum.

Section 5. The Reading Clerk, for the faithful discharge of his duties, as set forth in Article V, shall receive the sum of $10.25 per annum.

Section 6. The Sergeant-at-Arms, for the faithful discharge of his duties, as set forth in Article V, shall receive the sum of $10.25 per annum.

Section 7. The Auditors, for the faithful discharge of their duties, as set forth in Article V, shall each receive the sum of $24.00 per annum.

Section 8. All salaried officers shall be given increases or decreases in salary in the percentage proportion of wage scales negotiated by Local No. 165.

ARTICLE V

Duties of Officers

Section 1. It shall be the duty of the President to preside at all meetings of the Union and of the Executive Committee; to preserve order; to call special meetings, upon the written application of ten members in good standing made at least twenty-four hours previous to the time contemplated; and to perform such other duties as naturally appertain to his office. He shall also have the deciding vote in case of equal division.

Section 2. It shall be the duty of the Vice-President to perform all the duties incumbent on the President, in the absence of that officer.

Section 3. It shall be the duty of the Recording and Corresponding Secretary to keep a correct record of all the transactions of the meetings of the Union; to furnish members against whom charges are preferred with copies of such charges within one week after being preferred. He shall furnish the chairman of every committee with a list of the names of members comprising the same. He shall, in the absence of the President and

Vice-President, call the meeting to order, and request it to elect a chairman pro tem. He shall conduct, under the direction of the President, all requisite correspondence of the Union, and attest, with the President, all bills against the Union before presentation for its approval.

Section 4. It shall be the duty of the Financial Secretary-Treasurer to receive all applications for membership, which he shall immediately place in the hands of the Membership Committee; to collect the initiation fees and monthly dues; at the close of each meeting to report amount collected; to pay all demands on the treasury when countersigned by the President and Corresponding Secretary; to keep a correct account of all receipts and disbursements of the funds committed to his care; to notify members of special meetings; to notify candidates of their election to membership, and when to appear before the Union for initiation; at the regular meetings in June and January, make a written report detailing the financial conditions of the Union, and make a report, in writing, of the members admitted, suspended, expelled or deceased, during the preceding term; to issue working cards, each month, to all members entitled thereto; to notify all members who are three months in arrears. He shall deposit, in the name of the Trustees, all moneys in his hands exceeding the amount

of ten dollars; to exhibit the bank-book and his accounts to the Union whenever required to do so. He shall once each month personally visit every office in the city where it is known to him a member is employed, endeavor to collect all dues and arrearages of every description, and urge upon non-members the advisability of becoming members. He shall at all regular meetings of the Union read the names of those withdrawing during the previous month. He shall make out the amount of percentage due the International Union and keep a membership record as required of local unions, and make monthly reports in conformity with the requirements of that body. He shall keep a record of all apprentices entering offices under the jurisdiction of the Union. Said apprentices shall be registered and a certificate issued to each, which certificate shall be presented to the Union when application is made for membership as a journeyman, said certificate to be as follows:

WORCESTER TYPOGRAPHICAL UNION
NO. 165
Certificate of Apprenticeship

This is to certify that .....
has on this day entered the employ of .....
..... as an apprentice, at the age of ....
years.

Approved:

.....

Employer or Foreman

.....

Chairman

.....

President, W.T.U. No. 165

.....

Sec.-Treas., W.T.U. No. 165

Apprentice No. .....

Worcester, Mass., 19

In case of death of the Secretary-Treasurer, his receipts and accounts shall be sufficient vouchers against his heirs, executors and administrators.

He shall be bonded in a surety company and to such amount as the Union may determine; said bonds to be filed with the Secretary-Treasurer of the International Typographical Union. He shall also have exclusive control of the seal. The Secretary-Treasurer shall supervise all elections of this Union, for which he shall receive no additional compensation.

Section 5. It shall be the duty of the Sergeant-at-Arms to attend to the door, and, under the direction of the presiding officer, enforce compliance with the rules and regulations of the Union.

Section 6. It shall be the duty of the Reading Clerk to take care of, and read if necessary, all reading matter at the meetings of the Union.

Section 7. It shall be the duty of the Auditors to examine all the books and records of the financial officer for the three months ending in July 31, October 31, January 31 and April 30, and report to the Secretary-Treasurer of the International Typographical Union, within fifteen (15) days thereafter, the condition of the funds and accounts, the number of members in good standing, number initiated, expelled or suspended, admitted or withdrawn by card for each month, together with such other information as the Executive Council may deem necessary. A majority of Auditors must be present at the examination of accounts, and no member of the committee shall attach his or her signature to a report unless such member shall have personally participated in such examination.

Section 8. It shall be the duty of the Trustees to provide a place of meeting for the Union; to have charge of the charter and to have the care of the funds deposited in their names by the Treasurer. They shall make a report of the property of the Union in their possession at the annual meeting, and shall turn such property over to their successors.

ARTICLE VI

Resignations, Vacancies, Etc.

Section 1. If any elective officer shall fail to appear for installation for two successive months succeeding his election, unless prevented from so appearing by sickness or absence from the jurisdiction, he shall forfeit his office, and the same shall be filled as in case of any other vacancy.

Section 2. All elective officers of this Union, save the Secretary-Treasurer, shall have the privilege of resigning their respective office at any time by tending a written resignation in open meeting. In case the Secretary-Treasurer desires to resign, his resignation must lay over for one month from the time it is tendered, in order to effect a proper settlement of his accounts. His accounts being examined and found correct, his resignation may be accepted.

Section 3. All vacancies occasioned by death, resignation or other cause, shall be filled immediately by ballot, election in open meeting, judges of election being appointed by the President.

ARTICLE VII

Dues and Assessments—Liabilities of Members

Section 1. Each member of this Union shall pay into the hands of the Secretary-Treasurer ½ of one per cent of all earnings,

and in addition such local and I. T. U. assessments as may be levied and in force, and any member who may be one month in arrears for dues or assessments shall be in bad standing and shall not be entitled to any benefit.

Any member regularly employed who may be one month in arrears for dues or assessments, shall be deprived of the privileges of working in a Union office until such delinquency shall be paid.

Section 2. Members shall stand suspended when four months in arrears for local or International dues or assessments. Suspended members shall have no standing in the organization and shall be entitled to no benefits. For reinstating suspended members, the Secretary-Treasurer shall collect such local and International Typographical Union dues and assessments as were due at the time of suspension, together with such International per capita tax and assessments as would have accrued at the time of reinstatement. In addition to this there shall be collected a reinstatement fee of $25. Should, however, any other charge or charges appear against said member such action may be taken as may be deemed necessary by a three-fourths vote of the members present and voting at any regular meeting. The Union may expel a member for any sufficient reason, and it shall require a three-fourths vote of the members

present and voting to reinstate a member so expelled.

Section 3. In all offices where there is a Chairman, members shall pay their dues and assessments to said Chairman on or before 5th day of next succeeding calendar month.

Section 4. Any amount due this Union from members, from any cause, shall be charged and collected in the same manner as dues.

Section 5. If at any time the liabilities of the Union shall exceed the receipts thereof, extra assessments may be ordered to a referendum vote.

A motion for an assessment for any purpose other than as provided in Article VIII, Sec. 2, may be made at any regular or special meeting, and if seconded, shall come up under the order of Unfinished Business at the next regular meeting, when, if a majority of those present and voting, shall vote in the affirmative, such assessment shall be ordered to a referendum vote.

Section 6. Dues and assessments of members may be suspended during sickness, by vote of the Union, upon request being made to the Secretary-Treasurer in writing; the local Union to be reimbursed for this expenditure by the member benefited after recovery.

ARTICLE VIII

The Funds

Section 1. The funds of this Union shall be designated as follows: (1) Funeral Benefit and Old Age Pension Fund; (2) Sick Benefit Fund; (3) General Fund.

Section 2. These funds shall be derived and maintained in this manner. For the Funeral Benefit and Old Age Pension Fund, an assessment of 50 cents from members working 10 or more days in a financial month. For the Sick Benefit Fund, an assessment of 50 cents a month from each member. For the General Fund, all the moneys that remain from all sources of revenue of this Union.

Section 3. No part of these funds (excepting the General Fund) shall be used for any purpose other than hereinafter set forth, except upon one month's notice previously given, and by a two-thirds vote of the members present and voting in good standing.

ARTICLE IX

Disbursement of Funds

Section 1. Funeral and Old Age Benefit Fund—(a) Upon the decease of a member in good standing, the sum of one hundred and fifty dollars ($150) shall be paid the family or heirs of the deceased. (b) Newly initiated members, those admitted by card, suspended or expelled members, upon readmission, must

be members in good standing for six months before they shall be entitled to the funeral benefit. (c) Should a member take out a traveling card from this Union, and die with said card in his possession, or should a member be one month in arrears, the Union shall pay no death benefit. But, in the discretion of the Executive Committee, such deceased member may be buried at the expense of this Union, and the said committee shall have power to draw upon this fund for said purpose to the extent of not more than $100. (d) In the absence of competent relatives or heirs, the President and Treasurer of the Union shall take charge of the burial of such deceased member. These officers shall draw the benefit money from the fund, render an account, and convey the balance, if any remain, into said fund. (e) A time limit of 90 days after the death of a member in good sanding may be required by this Union before the payment of the funeral benefit if any exigency should require it.

To each member receiving the I. T. U. pension shall be paid the sum of two ($2.00) per week until such member becomes eligible for Social Security benefits.

Section 2. General Fund—This fund shall be used for the regular necessary expenses of the Union, and for such other purposes as two-thirds of the members present and voting at any meeting may determine, when not

less than ten members in good standing shall constitute a quorum.

Section 3. Sick Benefit Fund—The revenue of this fund shall be obtained by the payment of fifty (50) cents per month by each and every member of this Union. No claims shall be paid out of this fund but sick claims. Should the fund, at any time, become insufficient to meet the demands made upon it, said fund shall be replenished by an assessment upon the members, the amount of which shall be decided by referendum.

Section 4. Any member in good standing having been a member for six (6) consecutive months, who may become sick or disabled or quarantined on account of infectious disease, and thus prevented from following his usual occupation, shall receive ten (10) dollars per week for a period of (3) weeks, then seven (7) dollars per week for a period of ten (10) weeks, total payments not to exceed a period of thirteen (13) weeks; provided: That such sickness or disability does not proceed from disorderly or immoral conduct, and provided that it is not a chronic sickness, in which latter case the Union shall take special action.

Section 5. A member who has received sick benefits for thirteen (13) weeks in a year shall not be entitled to further benefits until one year from date of last payment on previous sickness.

Section 6. Benefits shall commence the first day of a member's disability and he shall be entitled to benefits for the first seven (7) days, provided he be disabled not less than fourteen (14) days. Such sick or disabled member shall furnish the Relief Committee a certified description of such sickness or disability from a reputable physician or practitioner on the sick claim blank provided by the Union. Payments shall be in two-week periods, unless, at the discretion of the Relief Committee, payments will be paid weekly, provided claim blanks are furnished for each period. No benefits shall be paid for a fraction of a week.

Section 7. Only members in good standing shall be entitled to benefits.

Section 8. Apprentice members may participate in the Sick Benefit Fund of the Union upon the same conditions required by a journeyman.

Section 9. The Sick Committee shall consist of the Secretary-Treasurer of the Union and the Chairmen of the various Chapels. Transportation expenses shall be granted them for the faithful discharge of their duties.

Section 10. Not more than twenty-six (26) weeks benefit shall be paid for any disability caused by any one disease or ailment nor for any permanent disability.

Sick Benefit Claim Blank

WORCESTER TYPOGRAPHICAL UNION NO. 165

Claim Blank

Full Name .....
When Did You Become Ill? .....
Name the Disease or Disability .....
On What Date Did Physician First Attend You? .....
Date of This Report .....
Claimant Sign Here .....
Street, Number .....

Attending Physician's or Practitioner's Statement

Give Date of Commencement of Illness .....
When and Where Did You First Examine Claimant? .....
Date of This Report .....
Date of Final Visit by Physician .....
Signature .....
Street, Number .....
City ..... State .....

ARTICLE X

Traveling Cards — Honorable Withdrawal Cards

Section 1. Any member on leaving the jurisdiction of this Union shall, upon application, be furnished by the Secretary-Treasurer with an International Union Traveling Card of Membership bearing date of the

period given, signed by the President and attested by the Secretary-Treasurer (or in case of death, absence, disqualification or resignation of the President, signed by the Vice-President), if it shall appear by the books of the Union that all requirements of the Constitution have been complied with, and that no charges are pending against him.

Section 2. Any person holding an International Union traveling card shall deposit such card with the Secretary-Treasurer immediately upon accepting work within the jurisdiction of this Union.

Section 3. Any member who may have retired, or who shall hereafter retire, from the business, shall upon application to the Secretary-Treasurer, with the approval of the Union, receive a certificate of Honorable Withdrawal, signed by the President and Secretary-Treasurer; provided, he shall be clear upon the books of the Union. The said certificate of withdrawal shall, if presented at the time of his return to the business, entitle the holder to full membership in this Union, and he shall be in active membership six months from the date of return before being entitled to funeral benefits.

Section 4. It shall be the duty of the Secretary-Treasurer, upon issuing a traveling card, to require the recipient to place his signature in the blank space provided for that purpose on said card; and the said officer

shall not receive a traveling card unless the holder thereof shall have first placed his signature in said blank.

ARTICLE XI

Chapels—Their Formation and Government

Section 1. In every office where there are three or more members of this Union employed, they shall form themselves into a Chapel, and elect a Chairman and Secretary, who shall serve six months, and be eligible for re-election.

Section 2. The Chairman must perform all the duties of his office, as hereinafter prescribed, as well as all other duties incident to his office.

Section 3. The Secretary must keep a record of all the doings of the Chapel, which record shall at any time be accessible to the Chapel.

Section 4. All members of the Chapel must attend all meetings thereof, if present in the office, unless leave of absence is granted by the Chairman.

Section 5. Members shall have the right to appeal from the decision of the Chapel to the Executive Committee, and from them to the Union, and I. T. U. Executive Council.

ARTICLE XII

Secret Ballots

Section 1. All votes upon the election of candidates for membership or upon the question of ordering or sustaining a strike; or upon the degree of punishment to be inflicted upon any officer or member convicted of misconduct; or upon a reduction, alteration or any dispute as to the construction of a scale; or in relation to the surrender of the charter, shall be taken by secret ballot, with black and white balls provided for that purpose. And in all such ballots the white balls shall mean "Yea" and the black balls "Nay."

Section 2. A three-fourths majority of white balls shall elect a candidate for membership.

ARTICLE XIII

Meeting—Quorum

Section 1. There shall be a regular meeting of the Union, held monthly, at such place and hour as the Union may elect.

Section 2. Seven members in good standing shall constitute a quorum for the transaction of business, except for appropriating money and amending the Constitution and By-Laws, when ten members in good standing shall constitute a quorum.

ARTICLE XIV

Scale of Prices

Section 1. The Union shall adopt a scale of prices for the government of all branches of the trade under its jurisdiction.

Section 2. Alterations or amendments to the scale may be made at any regular or special meeting of the Union, upon one month's notice being given of said proposed alterations or amendments. No member shall be entitled to vote upon a proposed change in the scale of prices unless he has been a member of this Union for the previous six months, and is in good standing, and it shall require a majority vote, by secret ballot, of such qualified members present at the meeting to change an established scale of prices, the members present and voting being not fewer than ten.

Section 3. No wage or other contract shall be signed by fewer than a majority of the scale or other committee appointed for such purpose and agreed to by the Union. No conference for the purpose of scale negotiations shall be attended by fewer than a majority of committee members. Violation of the foregoing shall be punishable by a fine of Two Hundred ($200) Dollars or expulsion, as the Union may determine.

ARTICLE XV

Altering and Amending the Constitution

Section 1. Any alteration or amendment of this Constitution must be offered at a regular meeting of the Union, and, if seconded, shall be entered on the minutes. At the next stated meeting it may be considered and amended, and if agreed to by the votes of a majority of the members present and voting (number being not fewer than ten) shall become part of the Constitution.

Section 2. Whenever a change is proposed copies of same shall be posted on all chapel bulletin boards one week before action is to be taken.

ARTICLE XVI

Permanency of the Union

Section 1. This body shall not have power to dissolve itself while there remain ten dissenting members.

BY-LAWS

ARTICLE I

Meetings

Section 1. The regular meetings of this Union shall be held at 2 P. M. on the first Sunday of each month (excepting July and August, and whenever the first Sunday falls the day before or the day after a holiday the meeting will be held the following Sunday) at such place as the Trustees may provide.

Section 2. A special meeting shall at any time be called upon the written request of ten members, giving twenty-four hours' notice of the same, made to the President, stating the purpose for which such meeting is to be called.

Section 3. No business shall be transacted at any special meeting except that for which it was specially convened, and which shall be definitely stated in the notice of the meeting.

ARTICLE II

Elections and Initiations

Section 1. Application for admission into the Union may be made through any member of the same. The applicant must first deposit, or cause to be deposited, in the hands of the

Secretary-Treasurer, the sum of twenty-five (25) dollars, such sum being the local initiation fee. The applicant shall also pay the required registration fee which shall be transmitted to the International Union with the name of the initiate.

At the beginning of the second year, if apprentices prove competent, they must be admitted as apprentice members of the Union.

Should a candidate, after election, fail for two regular meetings to come forward for initiation, after being notified by the Secretary-Treasurer of such election, he shall forfeit his claim to membership, together with the fee deposited, provided such delay is not caused by sickness. If a candidate be rejected the fee deposited shall be returned to him.

Section 2. Candidates for membership having been reported upon favorably by the Membership Committee, shall be balloted for, and shall be considered members from the date of election, but shall not be entitled to an International Union card of membership, nor to any benefit paid by the Union, until they have taken the obligation and signed the Constitution.

Section 3. Whenever a candidate for membership, after having been elected, is unable to be present for initiation at a regular meeting of the Union, either because of a violation of religious principles (providing such

regular meetings to be held on Sunday), or reasons that may be satisfactory to the Executive Committee, it shall be the duty of the President to appoint such time and place for initiation as shall be mutually convenient, at which time the candidate and the Recording and Corresponding Secretary of the Union shall be notified to appear. And such person, having at such time taken the obligation and subscribed his name to the Constitution, the same properly attested by the Recording and Corresponding Secretary, shall be considered to have been initiated into this body in due form and legality.

ARTICLE III

Committees

Section 1. An Executive Committee of five members, including the Vice-President, a Membership Committee of three members, a Sanitary Committee of three members, a Label Committee of not less than five members, an Apprentice Committee of three members, a Committee on Resolutions, consisting of three members, including the Vice-President of the Union, shall be the standing committees, and shall be appointed by the President, subject to a decision of the Union, provided objection is made to any appointment.

Section 2. The President shall appoint all special committees, and shall fill all vacan-

cies occasioned by sickness, death, absence from the city, etc., unless otherwise ordered by the Union.

Section 3. The Executive Committee shall settle all matters of dispute which may arise in any office between the men employed therein and the employer, or between the men themselves, when called upon to do so; shall report all derelictions of duty on the part of members which come under their notice; shall constitute an Auditing Committee for all bills presented against the Union, which may be considered referable to a committee; shall examine the accounts and books of the Secretary-Treasurer semi-annually, or whenever required by the Union to do so, and report to the Union. They shall perform such other duties as the Union may from time to time direct.

Section 4. The Membership Committee shall receive from the Secretary-Treasurer all applications for membership as soon as possible, and if such applications are received one week previous to a regular meeting of the Union, the committee shall report in writing on the merits of the candidate at that meeting, except in cases that may conflict with I. T. U. laws.

Section 5. The duties of the Sanitary Committee shall be to visit, at stated periods, the different newspaper and job offices in their jurisdiction, and make a report of their

findings as to the sanitary conditions of places visited at the next regular meeting.

Section 6. The duties of the Label Committee shall be to cooperate with the International President, to encourage, by systematic campaign, the use of the Allied Printing Trades Council label on printed matter. It shall be the duty of such Label Committee, immediately upon organization, to forward to the President of the International Typographical Union, the name and address of the Secretary of said committee.

Section 7. The duties of the Apprenticeship Committee shall be to inquire into the educational qualifications of applicants for apprenticeship, yearly examination of each apprentice, to ascertain if he is meeting the necessary requirements called for in the several classes of work specified for each year of his apprenticeship, and if, after such examination, the committee finds the apprentice has not made satisfactory progress, it shall so report to the Union for such action as it is deemed proper to take; to require the attendance of apprentices at continuation and other schools, attendance at the meetings of the junior or senior body and report any delinquency to the Union; to encourage all apprentices in the last three years of their apprenticeship to complete the Lessons in Printing provided by the International Typographical Union.

Section 8. Burial Committee — On the death of a member in good standing the President will appoint four members to constitute a burial committee, whose duty it shall be to hold services, at which the Typographical Union ritual shall be read whenever permissible. They shall be empowered to contract expenses necessary, not to exceed ten ($10) dollars.

Section 9. All special committees shall report in writing at the next regular meeting following completion of their duties unless otherwise directed by the Union.

ARTICLE IV

Dues and Cards

Section 1. The Union dues of new members shall commence at the date of election.

Section 2. Every member of the Union shall be required to have a working card, signed by the Secretary-Treasurer of the Union, which it shall be his duty to immediately present to the Chairman of the office in which he obtains work; and no member of the Union shall give encouragement to any person who shall refuse to comply with the requirements of this section.

Section 3. Any member of the Union in good standing shall be entitled to a working card, to be issued yearly by the Secretary-

Treasurer. All fines or assessments levied on members must be paid before the renewal of a working card.

ARTICLE V

Miscellaneous

Press Notices. The President and Recording Secretary shall constitute a committee for furnishing the newspapers, in relation to the secret sessions of the Union, for publication, any items that they in their judgment see fit. Any other members so doing shall be expelled for the first offense, upon proof thereof.

Suspension of By-Laws. Any of these By-Laws may be suspended by a two-thirds vote of the members present and voting at any regular meeting.

Payment of Bills. All bills against this Union must be presented at a regular meeting of the Union before being paid.

RULES OF ORDER

1. No business shall be taken up except in the order prescribed, unless, on motion, such irregularity shall be sanctioned by a majority of the members present.

2. No motion shall be received or laid before the Union unless moved and seconded, nor open for discussion until stated by the President; and when a question is before the Union, no other motion shall be in order, except, first, to adjourn; second, to lay on the table; third, to previous question; fourth, to postpone; fifth, to refer; sixth, to amend; which shall have precedence in the order in which they are arranged. The first three shall be decided without debate. The fourth shall also be decided without debate, unless it is proposed to postpone to a definite period, in which case it shall be debatable.

3. Resolutions, amendments to the Constitution and By-Laws, and charges against officers and members, must in all cases be presented in writing; otherwise they shall not be considered.

4. The mover of any verbal proposition shall, upon request of the Chair, or two or more members, reduce it to writing.

5. Any member entitled to a vote may

move for a division of the question when the sense will admit it.

6. A motion to reconsider any former resolution or vote shall only be made and seconded by members who voted with the majority; provided, however, that no motion to reconsider shall be entertained after one regular meeting shall have intervened.

7. When a member speaks he shall arise and address the presiding officer, confining himself strictly to the merits of the question under consideration. He shall not be interrupted while speaking, unless by the presiding officer, who may call him to order or admonish him to a closer adherence to the subject, and to avoid all personalities. Nor shall a member be allowed to speak more than twice on the same subject without the permission of the presiding officer. When two or more members rise at once, the presiding officer shall decide who is to speak first.

8. On the call of five members for the previous question, the President shall put it in this form: "Shall the main question now be put?" And until that is decided it shall preclude all amendment to the main question, and all further debate.

9. The officer or member presiding in the absence of the President shall, for the time being, possess the powers and privileges vested in the President by the Constitution and By-Laws of this Union.

10. No person not a member shall be allowed to be present at a meeting without the consent of the Union.

11. In the absence of a standing rule to apply to a question before the Union, recourse shall be had to Roberts Rules of Order.

12. Questions of order shall be decided by the President; but in case of an appeal from his decision, the Union shall determine by vote without debate.

DUTIES OF CHAIRMAN

1. It shall be the duty of every Chairman, immediately after his election or appointment, to notify the Recording and Corresponding Secretary of the Union of such fact.

2. He shall thoroughly canvass the office under his charge, and use all honorable means to induce all printers employed therein to become members of the Union.

3. He shall immediately ascertain from any stranger obtaining employment in his office whether he is a member of the Union, whether he holds a Union card, where he was last employed, how long he has worked in the city, and such other matters as may be necessary to a knowledge of his antecedents.

4. He shall collect the dues of the members of the Union employed in the office every month, turning the same over to the Secretary-Treasurer of the Union immediately thereafter, and taking the proper receipts therefor; which receipts he shall hand to their respective owners before the day of the meeting of the Union. He shall also, for the purpose, keep a small memorandum book, in which he shall enter the names of the members, and the amounts paid to him by them respectively each month; which book he shall, on retiring from such chairmanship,

turn over to his successor or to the Secretary-Treasurer of the Union.

5. He shall see that the law in regard to giving the preference of work to Union members is strictly carried out, and immediately report, in writing, to the President of the Union all violations thereof by members of the Union. He shall also report, in writing, all violations of the Constitution and By-Laws.

6. He shall report to the Union, when requested by the President, the condition of the office in which he may be Chairman, and such other matters as he may deem of importance to the Union.

7. He shall cause to be posted on the Chapel bulletin board all accumulated overtime each week.

8. He shall report at once all matters of dispute between the employers and the men employed in his office to the Chairman of the Executive Committee for adjudication.

9. He shall decide all disagreements or disputes between the members of the Union employed in his office; and such decisions shall in all cases be binding until reversed (on appeal) to the chapel and then to the Executive Committee.

10. On leaving the office in which he may be employed, he shall immediately notify the Recording and Corresponding Secretary of the fact.

ORDER OF BUSINESS

1. Opening Prayer.
2. Pledge of Allegiance.
3. Reading of the Minutes.
4. Acceptance of Cards.
5. Reports upon Candidates.
6. Election and Initiation of Candidates.
7. Proposition of Candidates.
8. Nomination of Officers.
9. Election and Installation of Officers.
10. Reports of Officers.
11. Reports of Committees.
12. Reports of Chairmen of Chapels.
13. Reports of Delegates.
14. Receiving Communications.
15. Presentation of Bills.
16. Accusations and Trials.
17. Unfinished Business.
18. New Business.
19. Good and Welfare of the Union.
20. Report of Financial Secretary.
21. Adjournment.

RESPONDENT'S EXHIBIT 1

Photoengravers Proposal on Jurisdiction

Received February 7, 1957

Section 2. The process of photo-engraving and its attendant work thereto is defined as being and is all operations of the process pertaining to the production of photo-engraving plates, plates for offset, and gravure cylinders and plates of any substance or material from copy or from originals and/or subjects when furnished in lieu of copy up to the finished product.

All material to be reproduced for printing purposes shall serve as copy for the camera and be processed and completed under present or future operations by members of the Worcester Photo-Engravers' Union No. 47.

The jurisdiction of the I.P.E.U. of N.A. includes photography, the handling and processing of all negatives and positives of photo-composed type film or other copy for reproductive purposes, color scanning, stripping, printing, etching, finishing, engraving, tint laying, proofing, routing, blocking, making of offset plates, dot etching, operation of photo-composing machines, the making of masks for color separations and other purposes and dropout on plates or negatives, retouching including opaquing of positives, layout and makeup work of all kinds to include the traditional set-up assembly and positioning necessary and required for the completion of the process, the marking of proofs and papers to indicate color and other corrections to be made on plates, all corrections and re-etching of plates, the operation of electronic platemaking devices and machines, the making of acetate color proofs, the making of blue, silver and velox prints.

The making from copy of negatives or positives of type, hand-lettering illustrative and decorative material by the method of photography as presently practiced by members

of the I.P.E.U. of N.A. is part of the process of photo-engraving as defined. Stripping and printing of these negatives and positives is also part of the process of photo-engraving as defined. Where these negatives and positives are to be combined with the product of the photo-typesetter (which is received as copy), by the method of stripping as presently practiced by members of the I.P.E.U. of N.A., they shall continue to be stripped by members of the I.P.E.U. of N.A.

Jurisdiction of the I.P.E.U. of N.A. also includes handling and processing of the products emanating from the photo-typesetter. Should any publisher install any equipment or adopt any work processes designed as a substitute for, or evolution of, work now being done by photo-engravers, the publishers shall recognize the jurisdiction of the I.P.E.U. of N.A. over such equipment and work processes and shall make no other contract covering such work.

RESPONDENT'S EXHIBIT 2

WORCESTER TELEGRAM PUBLISHING COMPANY, INC
WORCESTER, MASS.

February 21, 1958

Mr. Benjamin G. Hull
Associate Commissioner
Board of Conciliation and Arbitration
State House
Boston, Mass.

Dear Mr. Hull:

Your telegram regarding a conference called for 10:30 A.M. this morning in the State House, Boston, came to my

attention this morning. It is impossible on such short notice to be present. Furthermore, the parties are scheduled to appear in Worcester at a hearing before the National Labor Relations Board on Monday, February 24th, and at further hearings before the National Labor Relations Board, beginning March 17 on complaints issued by the National Labor Relations Board against the International Typographical Union and its local No. 165. These proceedings will occupy the parties.

A copy of this letter is also being delivered by messenger to Robert Segal at 11 Beacon Street, attorney for the Union.

Very truly yours,
Howard M. Booth,
Publisher

RESPONDENT'S EXHIBIT 4V

WESTERN UNION

June 10, 1954

D. H. McElroy, President
Lodi Typographical Union No. 983
1900 Holly Drive
Lodi, California

Taft-Hartley prohibits making membership or non-membership a qualification for work. For seven years we have been telling and printing this fact. All employees working under terms of contract share in all shop benefits. That was Supreme Court ruling even under Wagner Act.

Woodruff Randolph, President

l:kha

RESPONDENT'S EXHIBIT 4QQ

December 17, 1957

Mr. Richard J. Ryan, President
Newark Typographical Union No. 103
207 Market Street, Room 509
Newark (2) New Jersey

Dear Mr. Ryan:

This is in reply to your letter dated December 11 in which you ask whether or not the Taft-Hartley law prohibits a union from adopting a regulation or a local law which would prohibit an applicant from establishing priority while his application for membership is pending in the local union and subject to approval or non-approval by the membership.

The Taft-Hartley law prohibits discrimination in employment on the basis of membership or non-membership in a union. Ever since adoption of the Taft-Hartley law in 1947 the ITU has advised local unions they may not determine priority on the basis of membership in the union.

In your letter you refer to several ITU laws regarding the holding of priority and in this connection I refer you to the provisions of Section 1, Article XIV, ITU General Laws which you will find on Page 100 of the 1957 ITU Book of Laws. This section states:

> "In circumstances in which the enforcement or observance of provisions of the General Laws would be contrary to public law, they are suspended so long as such public law remains in effect."

Because of the Taft-Hartley law priority cannot be based on the date when an applicant is obligated as a member of the union. Even before the effective date of the Taft-Hartley Law officers of local unions were advised to refrain from issuing permits to applicants for membership. The issuance of such permits indicates a control over em-

ployment opportunities on behalf of members of the union over those who are not members. The information issued by the Executive Council was first sent out in ITU Postcard Bulletin No. 83. I am enclosing herewith for your information a copy of our Form B93 on "Issuance of Permits" covering this subject.

Trusting the above information will be of help to you and with all good wishes for a happy holiday season, I am

Fraternally,
President

1-kha
Encl. - Form B93

RESPONDENT'S EXHIBIT 4RR

December 17, 1957

Mr. E. M. Wilson, President
Honolulu Typographical Union No. 37
Box 556
Honolulu (9) Hawaii

AIR MAIL

Dear Mr. Wilson:

In reply to your letter dated December 9, this office has no authority to waive the application of particular laws or provisions of our laws which are a part of the local contract covering regulation of overtime work and the necessary cancellation thereof.

It must be remembered in this connection that the application of such laws and the contract must be without discrimination between the employment of members or non-members, so long as they are competent journeymen. If this is kept in mind no difficulty or controversy should ensue with respect to application of any part of the Taft-Hartley law.

With kind regards and best wishes for the Holiday Season, I am

Fraternally,
s/ WR 12/17

1-wt
cc: Gerhard VanArkel, Esq.

RESPONDENT'S EXHIBIT 488

February 20, 1958

Mr. Joseph Gebauer, President
East Liverpool Typographical Union No. 318
315 Vine Street
East Liverpool, Ohio

Dear Mr. Gebauer:

Your letter of February 13 to President Randolph seeking information relative to charges and trial procedure was referred to the undersigned for reply.

Under the circumstances described and in view of the questions you have asked I think it is appropriate that we first direct our attention to the provisions of Section 22, Article IV, ITU Bylaws. Said Section 22 provides in part:

> "The accused may, if he so desires, waive any and all rights guaranteed to him by the constitution and bylaws; and upon such waiver the union may, by a majority vote, proceed to act . . ."

The foregoing provision is pointed out because of the fact that you indicate that the member in question is "very belligerent" and "did not appear" before the investigating committee.

Next I wish to direct your attention to the provisions of Section 15, Article IV, ITU Bylaws. This particular sec-

tion sets a limit upon the penalty which may be imposed for a first offense.

Because of the fact you indicate that the member in question may refuse to pay any such fine as may be levied by your union I wish to point out that the Executive Council has ruled as follows:

"Members are required to pay all dues and assessments when due. Persons making collections must not accept per capita tax, or only a portion of ITU dues and assessments owing, unless all is paid . . ."

It follows, and you have a good basis for this position, that when the local union has levied a proper fine under the charges and trial procedure that fine must be paid along with any dues and assessments which may be owing. In other words your union should not accept the member's per capita tax and assessment payments if the money to cover a properly imposed fine is not also paid.

You are correct in assuming that a convicted member, if appeal is made to the Executive Council, must place in escrow the amount of the fine in addition to having paid all dues and assessments which may have been owed. The foregoing statement is in accord with the provisions of Section 35, Article IV, ITU Bylaws.

For your information I wish to point out that Section 5, Article XII, ITU Constitution, on the "Duties of Membership" fully sets forth the duty of each member to comply with the laws, rules, regulations and decisions of the ITU and its subordinate unions. This particular section should fortify your position that the member against whom charges are pending must comply with the action of your local union if that member desires to remain a member in good standing.

Should the member fail to pay the fine which may be imposed by East Liverpool Typographical Union and should the member decline to appeal to the Executive Council

your union would be within its rights to refuse to accept any further dues and assessments from said member. In time that member would become delinquent and eventually suspended for non-payment of dues. When the member is delinquent to the extent of four months he or she would stand automatically suspended for non-payment of dues. Any member so suspended and who continues to work within the jurisdiction of a local union can reaffiliate with the ITU only through making an application for new membership.

Prior to 1947 when the Taft-Hartley law was enacted the closed shop was legal. In those years preceding 1947 a member who failed to pay his dues and assessments or any fines which might be levied was prevented from working until said moneys were paid. The Taft-Hartley law outlawed the closed shop and as a result your union cannot legally prevent a person who has lost their ITU membership from working in your shop. In other words if your union fines the member in question and if that member fails to pay any further dues and assessments there is no legal step that your union can or would be permitted to take to deprive that person of his or her employment.

Trusting that I have been able to supply you with information which will prove helpful and with kindest personal good wishes, I am

Fraternally,

Second Vice-President

3:kha

PETITIONERS' (REGIONAL DIRECTOR) EXHIBIT 1

1956 1957 PROPOSED AGREEMENT

AGREEMENT

THIS AGREEMENT, made and entered into this .....day of.....by and between

.....

through its authorized representatives, the party of the first part, hereinafter sometimes referred to as the Publisher, and Haverhill Typographical Union No. 38, a subordinate union of the International Typographical Union, by its officers or a committee duly authorized to act in its behalf, party of the second part, hereinafter sometimes referred to as the Union.

ARTICLE 1

1. *Term of Agreement*

This agreement shall be in effect for a period of one year, beginning November 1, 1956, and ending October 31, 1957, and for such reasonable time thereafter as may be required for the negotiation of a new agreement.

2. *Sixty Days' Notice*

It is agreed that if either party to this contract desires to change it in any particular, sixty days' notice in writing shall be given before its expiration. Proposals shall be submitted by the opening party not less than thirty days prior to the expiration date.

3. *Bargaining Agent*

The Publisher hereby recognizes the Union as the exclusive bargaining representative of all employes covered by this agreement. The words "employe" and "employes" when used in this contract apply to journeymen and apprentices.

4. *Journeymen and Apprentices*

All composing room work shall be performed only by journeymen and apprentices. Apprentices may be employed only in accordance with the ratio of apprentices to journeymen provided in Article III of this contract.

5. *Jurisdiction*

Jurisdiction of the Union and the appropriate unit for collective bargaining is defined as including all composing room work and includes classifications such as hand compositors, typesetting machine operators, makeup men, bank men, proofpress operators, proofreaders, machinists for typesetting machines, operators and machinists on all mechanical devices which cast or compose type or slugs, or film, operators of tape perforating machines and recutter units for use in composing or producing type, operators of all phototypesetting machines (such as Fotosetter, Photon, Linofilm, Monophoto, Coxhead Liner, Filmotype, Typro, and Hadego) and employes engaged in proofing, waxing and paste makeup with reproduction proofs, processing the product of phototypesetting machines, including development and waxing; paste makeup of all type, hand lettered, illustrative, border and decorative material constituting a part of copy; ruling; photoproofing; correction, alteration, and imposition of the paste makeup serving as the completed copy for the camera used in the plate making process. Paste makeup for the camera as used in this paragraph includes all photostats and prints used in offset or letterpress work and includes all photostats and positive proofs of illustrations (such as Velox) where positive proofs can be supplied without sacrifice of quality or duplication of efforts. The Publisher shall make no other contract covering work as described above, especially no contract using the word 'stripping' to cover any of the work above mentioned.

Unless otherwise specified in this agreement, all teletype setter tape shall be perforated by journeymen or apprentices covered by this agreement.

6. *Foreman*

The hiring, operation, authority and control of each composing room shall be vested exclusively in the office through its representative, the foreman, who shall be a member of the Union. In the absence of the foreman, the foreman-in-charge shall so function.

All orders, instruction, reprimands, etc., must be given through the foreman who shall have the right to assign men to any composing room work he deems necessary.

7. *Journeyman Defined*

In view of the agreement in Section 4 hereof that only journeymen and apprentices are to be employed, and since it is the desire and intent of the parties to assure insofar as possible the continued maintenance of a high degree of skill in the journeyman classification and a corresponding high degree of quality and quantity of production, it is mutually agreed that journeymen are defined as: (1) Persons who prior to the effective date hereof worked as journeymen in the composing rooms of the Publisher; (2) Persons who have completed approved apprentice training as provided in this contract, or have passed a qualifying examination under procedures heretofore recognized by the Union and the Publisher; (3) Persons who have passed an examination recognized by both parties to this contract and have qualified as journeymen in accordance therewith. Persons seeking to qualify as journeymen shall be given an examination under non-discriminatory standards and procedures established by the parties hereto (or the Joint Standing Committee), by impartial examiners qualified to judge journeyman competency selected by the parties here-

to (or the Joint Standing Committee). In the event agreement cannot be reached on the standards or procedures to be followed, or the examiners to conduct such examination, the dispute shall be submitted to the Presiding Justice of the Haverhill District Court whose decision shall be final and binding on the parties. In hiring new journeyman employes the foreman may not exclude as candidates for employment any individuals who have established competency as journeymen, but must recognize priority as follows: First: Regular situation holders. Second: Subject to established hiring practices, other journeymen who have worked in the composing room. Third: Individuals concerning whose competency as journeymen the foreman has no reason for doubt or persons who have registered for employment after having passed the examination hereinbefore mentioned.

8. *Observance of Union Laws*

This contract alone shall govern relations between the parties on all subjects concerning which any provision is made in this contract, and any dispute involving any such subjects shall be determined in accordance with the arbitration clause in this agreement.

The General Laws of the International Typographical Union, in effect January 1, 1956, not in conflict with law, shall govern relations between the parties on those subjects concerning which no provision is made in this contract.

Nothing contained herein shall be construed to interfere in any way with the creation or operation of any rules not in conflict with law or this contract by any chapel or by the Union for the conduct of its own affairs.

9. *Struck Work*

The Employer agrees not to require employes to perform composition or other work executed or to be further worked

on, wholly or in part, by exployes working in plants declared unfair by the union.

10. *Arbitration*

A joint standing committee of four members shall be appointed, two of the four to be named by the Publisher and two by the Union. In case of a vacancy on this joint standing committee from any cause, said vacancy shall be filled by the appointment of a new member by the party in whose representation on the joint standing committee the vacancy occurs. To this committee shall be referred for settlement all disputes which may arise as to the scale of prices hereto attached, the construction to be placed on any clause of the agreement or alleged violation thereof, all disputes regarding discharged men which cannot be settled otherwise. The joint standing committee must meet within five days from the date on which either party notified the other party in writing that a meeting is desired, and shall proceed forthwith to settle any question before it. Such decisions shall be final and binding on both parties to this agreement. If the joint committee cannot reach an agreement on any dispute within ten (10) days (which time may be extended by unanimous agreement) from the date on which the dispute is first considered by it, the members of the committee, at the request of either party hereto, shall form a Board of Arbitration and shall elect a fifth member, who shall act as chairman of the board. The board of arbitration thus formed, shall proceed with all dispatch possible, to settle the dispute. It shall require the affirmative votes of at least three of the five members of the board of arbitration, to decide the issues, and the decisions of the board of arbitration in all cases shall be final and binding on the parties hereto. The decision of the board of arbitration shall be legal and binding when signed by a majority.

Pending a final settlement of discharge cases, discharged employe may be barred from the composing room. If reinstated by the board, he shall be reimbursed for all time lost on a straight time basis, as provided in this contract.

Local Union laws not affecting wages, hours or working conditions and the General Laws of the ITU shall not be subject to arbitration.

ARTICLE 2

1. *Overtime*

All time worked before or in excess of the regular hours established for the day's or night's work or at the end of a week's work shall be paid for at the overtime rate, which shall be double time based on the regular hourly wage paid.

When any employe is required to work on regular off-day or off-night or the sixth or seventh shift in any financial week, said employe shall be paid overtime for such work.

2. *Holiday Rates*

All work performed on Sundays, New Year's Day, February 22, April 19, Memorial Day, July Fourth, Labor Day, October 12, November 11, Thanksgiving Day and Christmas shall be paid for at the rate of double time.

Regular situation holders not required to work on the specified holidays or days celebrated as such will be paid at the regular straight time rate for a day's or night's work as specified in the agreement.

When recognized holidays fall within the three weeks' vacation period said holidays be celebrated on first scheduled shift following vacation period. When employe is called to work on said scheduled shift following vacation period he shall be paid at double the prevailing rate.

When recognized holidays fall on regular off day employes shall be given another off day in holiday week during

work week. When employe is called to work on said shift he shall be paid double the prevailing rate.

3. *Not Less Than Day's Pay.*

In no case shall an employe receive pay less than a full shift except when discharged for cause or excused at his own request.

4. *Call-Back*

Employes called back after having left the office shall be paid $2.00 for such callback and overtime rates for all time worked.

5. *Exchanging Type, etc.*

The interchanging, exchanging, borrowing, lending or buying of matter, either in the form of type or matrices between newspapers, between job offices, or between newspaper and job offices, not owned by the same individual firm or corporation, and published in the same establishment, shall not be allowed unless such type or matrices are reset as nearly like the original as possible, made up, read and corrected and a proof submitted to the chairman of the office. Transfer of matter between a newspaper office and a job office, or a job and a newspaper office, where conducted as separate institutions and from separate composing rooms, owned by the same individual, firm or corporation, is not permissible unless such matter is reset as nearly like the original as possible, made up, read and corrected and a proof submitted to the chairman of the office. Provided, that where an interchange of matter from an English publication to a foreign language publication, or vice versa, is desired, under the provisions of this section, such exchange shall be regulated by agreement between the employer and the local unions interested. The time limit within which borrowed or purchased matter or matrices, are to be

reset, shall be ten days from date of use. If matter is not reproduced within time limit specified, it shall be reproduced as soon as help is available. In no circumstances shall such reproduction be required other than at straight time rates and such reproduction shall not be required when so doing would necessitate overtime rates on other advertising composition in the composing room.

This section shall not apply to original commercial composition purchased from commercial trade composition plants or other composing rooms when such composition is an integral part of production of a particular commercial job.

Matrices, plates, cuts, or type of local advertisements, or other local matter, furnished to newspaper offices may be used by such offices, provided such matter shall be reproduced as nearly like the original as possible within the time limit specified herein. It is understood that this rule does not apply to national advertising, or printed supplements and magazines, or syndicate and other feature news matter in matrices, cuts or plates.

A local advertisement is: Any advertisement originally set within the jurisdiction of party of the second part; any advertisement, wherever set, advertising the business of any concern that is in the local field. The addition of names and addresses of local selling agents to national advertising does not make them local advertisements.

6. *Discharges*

Foreman of printing offices shall have the right to employ help, and may discharge (1) for incompetency, (2) for neglect of duty in the performance of composing room work, (3) for violation of office rules which shall be kept conspicuously posted and which shall in no way abridge the civil rights of the employes or their rights under herein accepted International Typographical Union Laws, and

(4) to decrease the force, such decrease to be accomplished by discharging first the person or persons last employed, either as regular employes or as extra employes, as the exigencies of the case may require.

No employe who has been discharged from the office shall be eligible to sub except at the option of the foreman, but this shall not apply to men laid off to reduce the force: Provided, that after three months any former employe may seek employment in any office from which he has been discharged.

No foreman shall be subject to fine, discipline or expulsion by the Union for any act in the performance of his duties as foreman when such action is authorized by this Agreement, or for enforcing Office rules, or for carrying out the instructions of the Office when there is a difference of opinion as to the interpretation of this Agreement. Such difference of opinion shall be subject to arbitration under Article I, Section 10.

7. *Reason for Discharge in Writing*

Upon demand, the foreman shall give reason for discharge in writing which demand shall be made within 72 hours after the employe is informed of discharge.

8. *Ability and Priority of Substitutes*

Persons considered capable substitutes by foreman shall be deemed competent to fill regular situations, and shall be given preference in the filling of vacancies in the regular force, and also extra work. The substitute eldest in continuous service shall have prior right in the filling of the first vacancy, and also extra work. This section shall apply to incoming and outgoing foremen.

9. *Sanitary Regulations*

The Publisher agrees to furnish at all times sufficiently

ventilated, properly heated and well lighted places for the performance of all work in the composing room.

10. *Vacations*

(a) *Number of Days*

Vacations with pay shall be provided for each employe on the basis of one day's vacation for each 20 days worked. It is agreed that the total vacation time shall not exceed 10 days except as provided in Paragraph (d) of this section. Employes shall have the choice of vacations in priority order.

(b) *Rate*

It is agreed that compensation for vacation shall be at the rate of pay for the shift on which the employe is employed. Employes receiving premium pay shall be paid at said rate while on vacation. All money for vacations shall be paid in advance.

(c) *Posted April 15th*

Vacation schedules shall be posed on or before April 15th for the vacation period of the particular year that is in effect, with allowances for arrangements agreed outside of the summer months.

(d) *Third Week of Vacation*

An additional vacation with pay of five days will be given to an employe who on January first of each year has completed at least ten years of service with the Publisher.

(e) *Regular Rates*

In the event an employe works during his vacation period at the request of the Publisher, he shall be paid at double price in addition to his vacation pay.

(f) *Covered at Foreman's Discretion*

The foreman shall use his own discretion in the covering of any situation that is open during the situation holder's absence while on vacation.

(g) *Vacation Credits for Employe*

Any employe leaving his place of employment voluntarily or otherwise shall be entitled to and receive his vacation credit pay on a pro rata basis.

(h) *Vacation Credits Paid To Estate*

Upon the death of an employe with established vacation credits, all vacation credits accrued shall be paid immediately into the estate of the deceased employe.

(k) *Sick Leave*

All employes of The Gazette composing room who are working a regular week schedule will be entitled to receive their regular pay for any period, up to two weeks, in which they are absent because of illness; provided, however, that whenever the aggregate of illness pay received by any employe during any calendar year of this agreement shall equal or exceed two weeks, no further illness pay to such employe shall be given during that calendar year, except by agreement of the employer or its representative and the Union or its representative.

If an employe is out any period longer than two weeks he may apply any part of his vacation time on such time if he so wishes.

11. *Right to Employ Substitutes*

The right of any employe to put on a competent substitute shall be confirmed and continued and the foreman shall use his utmost efforts to temporarily shift the force to facilitate the full exercise of said right.

Provided no employe shall work on his off-day or off-night or on his sixth shift without permission of the foreman.

Employes may claim new shifts, new starting times, choice of vacation schedules, and new slide days in accordance with their priority standing.

Article 3

Apprentices

1. *Ratio*

The ratio of apprentices shall be one to every eight journeymen, until three apprentices are employed.

2. *Age, Term and Duties*

Apprentices shall not be less than eighteen years of age at the time of beginning their apprenticeship and shall serve a term of six years. The foreman and chairman shall see that apprentices are afforded every opportunity to learn the different trade processes by requiring them to work in all classifications of the trade. When apprentices show proficiency in one branch they must be advanced to other classes of work.

The Joint Apprenticeship Committee shall establish a training program for apprentices. The training program of printer apprentices shall include thorough training under journeymen on all phases of floor work such as, hand composition, makeup, markup, and proof-reading. Where paste-makeup is used or where training on paste-makeup is available it shall be taught during the first five years of apprenticeship. In addition, at least one year of the training program must be devoted to training on one or more of the following: Linecasting machines, monotype keyboard and caster, teletypesetter tape perforator, or phototypesetting keyboard. Machinist apprentices must be trained in all phases of maintenance and repair of composing room equipment under the direction of a journeyman machinist. The Joint Apprenticeship Committee shall have authority to vary training programs to meet the problems arising because of varying equipment and shall have authority to direct temporary transfers of apprentices from one shop

to another to accomplish as much all-round training as may be suited to the capacity of the apprentice.

3. *Working Conditions*

Apprentices shall be governed by the same shop rules, working conditions and hours of labor as journeymen.

4. *Overtime*

No apprentice shall be employed on overtime work in an office unless the number of journeymen employed on overtime on the same shift equals the ratio prescribed herein.

At no time shall an apprentice be authorized to act in a supervisory capacity.

5. *Opportunities*

Haverhill Typographical Union, No. 38, reserves the right to refuse to allow an apprentice to any office that has not the equipment to afford instruction being given in the different branches of work agreed upon.

6. *Shifting Jobs*

No apprentice shall discontinue work on one shift and accept work on another shift or change from one employer to another without the consent of Haverhill Typographical Union, No. 38.

7. *Apprentice Committee*

A Joint Apprenticeship Committee composed of an equal number of representatives of the Union and Employers shall be selected by the parties to this agreement. All provisions of this agreement affecting apprentices shall be under the jurisdiction of this committee, which shall have control of, and be responsible for, the selection of apprentices and shall be vested with full power and authority to enforce all conditions outlined herein. Should the commit-

tee fail to agree on any question the matter shall be submitted to an arbitrator as provided in the Joint Standing Committee section thereof whose decision shall be final and binding.

8. *Military Service*

No new apprentice will be permitted to replace those who enlist in or are called for service in the military services of the United States of Canada (or their allies) in time of war or for the duration of any period of national emergency proclaimed by the governments of said countries. No new apprentice will be permitted to replace those drafted in the military or naval services of the United States or Canada. However, temporary apprentices to replace those in military services will be permitted upon new applicant signing an agreement stating that he is aware that he is taking the place of an apprentice who has been called to service and that he agrees to vacate the job upon return of the original apprentice. Upon again reporting for duty the situations and standing formerly held by these apprentices shall be restored to them.

ARTICLE 4

1. *Hours*

All work whether by machine or hand, shall be on the time basis. A week's work shall consist of 35 hours, made up of five equal shifts.

A lunch period of at least thirty (30) minutes shall be allowed for each shift, such time not to be included in the number of hours specified for a day's or night's work.

2. *Hours for Day and Night Work*

The hours for day work shall be between 7 a.m. and 6 p.m. Night work shall be between the hours of 6 p.m. and

6 a.m. Any shift not beginning and ending between 7 a.m. and 6 p.m. shall constitute a night shift.

3. *Foreman Assign Days*

The particular days constituting a situation shall be assigned by the foreman and the hours on each shift of the situation shall be fixed. Neither shall be changed except at the beginning of a financial week. Insofar as practical the five shifts constituting a situation shall be consecutive.

4. *Rates of Pay*

From November 1, 1956, to October 31, 1957, the regular straight time day rate shall be $97 per week. The night rate shall be 15% more than the day rate.

5. *Apprentice Scale*

Apprentices shall receive rates not less than 40 per cent or $1 per hour (whichever is the greater), 50 per cent, 60 per cent, 70 per cent, 80 per cent and 90 per cent of the journeyman scale, in each of the six years respectively.

6. *Machinists*

Machinists employed in composing rooms shall receive not less than the adopted scale for journeymen for day or night work as the case may be and must be journeymen. They shall have no control over the operator. No operator shall be compelled to do the work of a machinist.

7. *Scale for Aged Employes*

Any employe, who, by reason of advanced years or other cause, may not be capable of producing an average amount of work, may, by agreement between the employer and the Union, be paid less than is called for by the scale. Not more than two (2) employes can be listed under this classi-

fication, and in any event shall receive not less than 80% of the scale for the shift on which they are employed.

8. *Blue Cross-Blue Shield*

Beginning with date this contract becomes effective the Publisher agrees to pay premiums of Blue Cross and Blue Shield plans that were in effect January 1, 1956, and were paid for by the individual employes.

9. *Picket Lines*

No employe covered by this contract shall be required to cross a picket line established because of an authorized strike by any other subordinate union of the International Typographical Union.

10. *Severance Pay*

In event of consolidation or suspension, all employes affected shall receive severance pay of not less than two weeks' pay at the regular rate for each year's priority up to 26 weeks.

11. *Pension Plan*

The employer agrees to establish a pension plan covering composing room employes with these features: (1) Retirement to be at the time chosen by a disabled employe after attaining the age of 60 years without direct or indirect compulsion from the employer. The question of disability to be determined by a joint agency composed of an equal number of representatives of the party of the first part and party of the second part, (2) Amount of weekly pension to be 50 per cent of employe's highest rate of pay during period of employment.

ARTICLE 5

1. *Taft-Hartley Act*

Upon repeal or amendment of the Taft-Hartley Act, any clauses contained in this agreement because of the restrictions of the act or court decree rendered thereunder shall automatically become null and void unless kept alive by an applicable state law.

2. *Change in Laws*

If any provision or practice prevailing under previous contracts which has been excluded from this contract solely because of legal restrictions is determined by legislative enactment or by decision of the court to be legal, then such provisions shall upon written request of the Union be immediately effective and enforceable hereunder.

3. *ITU Not a Party to Contract*

It is agreed that the only parties to this agreement are the Employer and the Union. It is further agreed that the approval of this agreement by the International Typographical Union as complying with its laws does not make it a party thereto.

Signed this ..... *day of* .....

....

....

This agreement is approved as being in compliance with laws of the International Typographical Union, as limited by the Taft-Hartley Law, and the undersigned, on behalf of the Executive Council of the International Typographical Union, hereby pledges, as a matter of union policy only, its full authority under its laws to the fulfillment thereof without becoming party and without assuming any liability thereunder.

INTERMEDIATE REPORT

Case No. 1-CB-429
Case No. 1-CB-430

STATEMENT OF THE CASE

Upon separate charges duly filed by Haverhill Gazette Company and Worcester Telegram Publishing Company, Inc. (herein referred to as Haverhill and Worcester or collectively as the Companies) the General Counsel of the National Labor Relations Board, by the Regional Director for the First Region (Boston, Massachusetts) issued separate complaints, dated February 6, 1958, against International Typographical Union, its Executive Council, and International Typographical Union Local 38 and Local 165 and its Scale Committee (herein referred to as ITU, Local 38 and 165, or the Union, and collectively as the Respondents), alleging that the Respondents have engaged in and are engaging in certain acts and conduct in violation of the Act. The cases were consolidated for the purpose of hearing by order of the Regional Director. The Respondents filed separate answers to the complaints admitting certain allegations therein but denying the commission of any unfair labor practices.

Pursuant to notice a hearing was held in the Worcester case, at Worcester, Massachusetts, on April 2, 3, 4, and 29, 1958. All parties were represented by counsel and afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant evidence and to present oral argument. On April 29, 1958, certain stipulations were received in evidence with the understanding that the record remain open for 1 week so that counsel might have an opportunity to submit further evidence or exhibits. Having received no such request from counsel I entered an order closing the hearing as of May 8, 1958, and advised counsel

of their right to file briefs in the matter. Thereafter, about August 1, 1958, counsel for the General Counsel, the Respondents and Worcester submitted briefs which I have fully considered.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

Findings of Fact

I. The Business of the Companies

Haverhill is engaged in the business of publishing a daily newspaper and maintains its principal office, publishing plant, warehouses and other facilities at Haverhill, Massachusetts. In the year preceding the issuance of the complaint Haverhill held membership in, or subscribed to, various interstate news services, including United Press Association and Associated Press, advertised nationally sold products and its gross revenue from its publishing operations was in excess of $500,000.

Worcester is engaged in the business of publishing a daily newspaper and maintains its principal office, publishing plant, warehouses and other facilities at Worcester, Massachusetts. In the year preceding the issuance of the complaint Worcester held membership in, or subscribed to, various interstate news services, including Unted Press Association and Associated Press, advertised nationally sold products and its gross revenue from its publishing operations was in excess of $500,000.

I find that Haverhill and Worcester are engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

II. The Labor Organizations Involved

I find that ITU and Locals 38 and 165 are labor organizations as defined in Section 2 (5) of the Act.

I also find that the executive council, consisting of Woodruff Randolph, Charles M. Lyon, Harold H. Clark, Joe Bailey, and Don Hurd and their successors, is an agent of ITU within the meaning of the Act, and the scale committee is an agent of Local 165 within the meaning of the Act.

III. The Unfair Labor Practices

A. *The Pleadings*

The complaints allege that at all times material the Respondents were the representatives of the employees of Haverhill and Worcester, respectively, in a unit defined as employees engaged in composing room work. The complaints further allege that since about May 29, 1957, in the Haverhill case and about June 2, 1957, in the Worcester case, the Respondents have caused and attempted to cause the Companies to discriminate against their employees, or applicants or prospective applicants for employment, by insisting upon the inclusion of the general laws of the ITU as a condition precedent to the execution of a collective bargaining agreement as well as certain other contract provisions which would require the Companies to employ only ITU members, give preference to such members in respect to hiring, increase or decrease in the work force and employment of substitutes and delegate to Local 38 and Local 165 control over the seniority of composing room employees. It is further alleged that the Respondents failed and refused to bargain in good faith with the Companies by adamantly insisting upon inclusion of such terms as a condition precedent to the execution of an agreement and that the Companies designate only a union member as composing room foreman for the purposes of collective bargaining and adjusting grievances. In addition the complaints allege that the Respondents insisted upon acceptance of their work jurisdiction clause, that it, the demand that

the Companies bargain with respect to the hire, tenure and terms of employment of persons and employees not included in the appropriate unit and or job classification not in existence and not included with the unit. When the Companies refused to agree to these conditions the Respondents directed, instigated and encouraged their employees to engage in strikes, the Haverhill strike commencing about October 25, 1957, and the Worcester strike about November 29, 1957, which were current at the time of the hearing. By reason of the above acts and conduct the complaints allege that the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (b), subsections 1 (A) and (B), (2) and (3) of the Act.

The Respondents in their answers deny the foregoing allegations and assert that any existing labor disputes are the result of unfair labor practices on the part of the Companies including discrimination against ITU members in violation of Section 8 (a) (3) of the Act and refusals to bargain in violation of Section 8 (a) (5) of the Act.

B. *The Records and Stipulations of Counsel, Background of the Cases*

As already stated the hearing in the *Worcester* case was held before me on various dates in April 1958. During the hearing counsel stipulated that the testimony of Woodruff Randolph, president of the ITU, adduced at the hearing in *News Syndicate Company, Inc., et. al.* (*New York Mailers* case), Cases Nos. 2-CA-4967, 2-CB-1769 and 2-CB-1807, be incorporated in the record of this proceeding.

Counsel further stipulated that the record in *ITU, et al.*, and *Worcester Publishing Company, Inc.*, Case No. 1-CD-49, a hearing pursuant to Section 10 (k) of the Act, be incorporated herein.

The parties stipulated the record in *Alpert v. ITU*, an injunction proceeding under Section 10 (j) of the Act, in

the United States District Court for the District of Massachusetts, before Judge Aldrich, as the record in the *Haverhill* case.

While the facts in the cases differ the issues presented in each are the same, so for the purposes of discussion and resolution of the issues they will be considered together.

At this point it seems appropriate to briefly outline two previous cases involving the ITU for they afford not only background of the issues herein but were the subject of discussion during the bargaining negotiations in the *Worcester* matter.

Pursuant to proceedings based upon a charge filed by the American Newspaper Publishers Association (herein called ANPA) against the ITU and three of its officers, the Board on October 28, 1949, issued its decision (86 NLRB 951) adopting the Trial Examiner's findings that the intended and actual effect of the ITU's bargaining policy, following enactment of the Taft-Hartley Act, was to compel employers to exclude nonmembers from employment. The Board also adopted the Trial Examiner's finding that the ITU violated Section 8 (b) (2) of the Act by applying coercive pressures in the newspaper industry in order to compel employers to conduct their labor relations pursuant to a "bargaining" scheme designed primarily to effect the maintenance of "closed shop" conditions. The Board found that the ITU's bargaining programs known as "Conditions of Employment" or "no-contract" strategy and the "P-6A," or "60-day contract" strategy, each of which incorporated or included the ITU general laws, were violative of the Act. Under the no-contract plant the ITU set forth the "only" conditions under which its members would work, one condition being they would not work with nonunion men, and embodied the threat that failure of employers to provide the stated conditions would result in declarations by the Unions, pursuant to the general

laws, of a "lockout." The only difference between the no contract strategy and the 60-day contract, the Board held, was that under the latter reprisal action might be postponed for 60 days. The Board specifically refused to pass upon the question of whether the ITU violated Section 8 (b) (2) by demanding the inclusion in the 60-day contract of certain miscellaneous union-security clauses covering work jurisdiction of the Union, competency of composing room employees and the operation of the ITU general laws, for the reason that the bargaining strategy was designed to maintain closed shop conditions under penalty of strike action. The Board further found that the ITU demand that employers continue to hire only union foreman whose powers were detailed in the general laws, under threat of strike action, which was an integral part of its bargaining policy, thereby attempted to compel to limit the selection of this type of foreman to a class composed only of union members in violation of Section 8 (b) (1) (B) of the Act. The Board dismissed the Section 8 (b) (1) (A) allegations of the complaint and did not find a violation of refusal to bargain because the complaint did not allege a violation of Section 8 (b) (3) of the Act. On the basis of these findings the Board issued an order directing the ITU to cease and desist from engaging in the unfair labor practices thus found and to post notices.

On the same date the Board issued its decision and order in the *Chicago Typographical Union No. 16 and the ITU* case (86 NLRB 1041) wherein similar findings were made, except that the Board found the Respondents had refused to bargain in violation of Section 8 (b) (3) of the Act.

Thereafter the Board filed petitions for enforcement of its orders and the *ANPA* filed a petition for review in its case insofar as the Board failed to find a refusal to bargain on the part of the ITU. (*ANPA v. ITU, et al.*, 193 F. 2d 782 (C. A. 7).) The Court granted enforcement of the

Board's orders. The Court further held in the *ANPA* case (799-800) that there was evidence to support a finding of refusal to bargain even though there was no 8 (b) (3) allegation in the complaint and remanded the matter to the Board for consideration and decision upon the merits of the charge.

On May 6, 1953, the Board, pursuant to the remand, issued its supplemental decision and order (104 NLRB 806) in which it found that the local negotiators represented the interests of the ITU and exercised bargaining powers granted by it and that the ITU and its officers had failed to bargain collectively in violation of the obligations imposed by Section 8 (b) (3) of the Act. The order of the Board directed the ITU and its officers to cease and desist from refusing specifically, or by insistance, upon the 60-day contract, or any other means, to bargain collectively in good faith with any employer in the newspaper industry, when the employees of such employer comprise an appropriate unit and a majority have designated or selected the ITU to represent them for the purposes of collective bargaining.

On February 25, 1948, in an ancillary proceeding to the *ANPA* case, the United States District Court for the Southern District of Indiana issued an injunction pursuant to Section 10 (j) of the Act, *Evans v. ITU*, 76 F. Supp. 881. The Court found that there was probability that the Respondents herein violated Section 8 (b) (1) (A) and (2) of the Act and ordered the Respondents to refrain from engaging in certain conduct.

Upon the Board's petition to adjudge the Respondents in contempt the Court found, "the Respondents have deliberately attempted since issuance of the injunction to accomplish the objectives against which the injunction was directed, namely, the continuance of closed-shop conditions in the newspaper industry." (81 F. Supp. 675, 688.)

THE WORCESTER CASE

There is little, if any, dispute of the substantive facts in this matter. The evidence concerning bargaining negotiations comes primarily from Richard G. Steele, general manager of Worcester, and Joseph R. Mahoney, president of Local 165, witnesses for the General Counsel and Respondents, respectively. The General Counsel also called as witnesses, William B. Weinrich, production manager of Worcester and William B. Parry, assistant manager of New England Daily Newspaper Publishers Association. From the testimony of these witnesses I find as follows:

Local 165 has represented the composing room employees of Worcester for over 70 years and the last contract between the parties expired December 31, 1954.

During 1954, representatives of the Company and Local 165 met on 3 or 4 occasions and on 7 occasions in 1955, but were unable to reach agreement on a complete contract. However, around June 1955, following these meetings, the Company granted a wage increase, retroactive to January 1, 1955, and informed the employees of this action by written notice placed in their pay envelopes. Mahoney, "in the jargon of the union," characterized this as a voluntary increase. The next meeting, according to Mahoney, was held in July 1956, at which time representatives of Worcester claimed the 1955 pay increase indicated a tacit agreement had been reached, which was denied by representatives of Local 165, and the meeting concluded with the union representatives agreeing to submit a new contract proposal to the Company to serve as a basis for negotiations.

On August 21, 1956, James J. Quinn, then president of Local 165, sent a letter to Steele requesting that negotiations be reopened and submitted contract proposals. Thereafter the parties held six meetings in 1956, commencing about October 14, and a similar number in 1957. At these meetings, generally speaking, Worcester was represented

by Frank Phillips, manager of New England Daily Newspaper Association, Alfred S. Arnold, production manager, Howe C. Montheith, cost and methods engineer, and Steele, with Phillips acting as spokesman for the group. Local 165 was represented by Quinn while president and Mahoney, when he succeeded Quinn, and the local scale committee. In January 1957, Attorneys Elisha Hanson and Robert Bowditch entered negotiations on the part of the Company while William LaMothe, an international representative of ITU, joined the representatives of Local 165, in the negotiations.

The 1954 Contract; the Proposals of Local 165, and the ITU General Laws

Since the negotiations centered principally on demands of Local 165 concerning jurisdiction, the incorporation of the ITU general laws and the foreman's clause, it is appropriate to point out these provisions as they appear in the 1954 contract, the proposals of Local 165 and the specific general laws which the General Counsel alleges to be unlawful.

The 1954 contract stated:

> The jurisdiction of the Union is defined as including all composing room work in shops covered by this contract and includes classifications such as hand compositors, typesetting machine operators, make-up men, bank men, ad men, proofreaders, machinists for typesetting machines, operators, and machinists on all mechanical devises which cast or compose type or slugs.

With respect to foreman the contract provided:

> The operation, authority, hiring for and control of each composing room shall be vested exclusively in the office through its representative, the foreman, who shall be a member of the Union . . . Provided that nothing in the section shall be construed to conflict with the right

of the members holding situations to employ competent substitutes without consultation or approval of foremen. The contract stated that it shall govern in regard to all subjects covered therein and incorporated the general laws of the ITU, "not in conflict with state or federal law, shall govern relations between the parties on those subjects concerning which no provision is made in this contract."

The proposals submitted by Local 165 contained the above clauses relating to foreman and ITU general laws and a new jurisdiction provision, claiming:

> Jurisdiction of the Union and the appropriate unit for collective bargaining is defined as including all composing room work and includes classifications such as: Hand compositors; typesetting machine operators; make-up men; bank men; proofpress operators; proofreaders; machinists for typesetting machines; operators and machinists on all mechanical devices which cast or compose type, slugs, or film; operators of tape perforating machines and recutter units for use in composing or producing type; operators of all phototypesetting machines (such as Fotosetter, Photon, Linofilm, Monophoto, Coxhead Liner, Filmotype, Typro and Hadego); employees engaged in proofing, waxing and paste-makeup with reproduction proofs, processing the product of phototypesetting machines, including development and waxing; paste-makeup of all type, hand-lettered, illustrative, border and decorative material constituting a part of the copy; ruling photoproofing; correction, alteration, and imposition of the paste-makeup serving as the completed copy for the camera used in the plate making process. Paste-makeup for the camera as used in this paragraph includes all photostats and prints used in offset or letterpress work and includes all photostats and positive proofs of illustrations (such as Velox) where positive proofs can be supplied without sacrifice of quality or duplication of efforts. The

Employer shall make no other contract covering work as described above, especially no contract using the word "stripping" to cover only of the work above mentioned. Unless otherwise specified in this agreement all teletypesetter tape shall be perforated by journeymen or apprentices covered by this agreement.

The General Counsel contends, as alleged in his complaint, that the following provisions of the ITU general laws create unlawful employment conditions and are violative of the Act:

Article III, Section 12: It is unalterable policy of ITU that all composing room work, or any machinery or process appertaining to printing and the preparations therefor, belong to ITU, and all local unions of ITU are directed and required to reclaim jurisdiction and control over all such work being performed by persons who are not members of ITU or any ITU local union.

Article I, Section 4: Any person before entering the trade as an apprentice must first be approved by the ITU local union.

Article I, Section 5: No apprentice may leave the employ of one employer and enter the employ of another employer without the written consent of the president of the ITU local union.

Article I, Section 7: At the end of the first year, if an apprentice proves competent and the foreman and apprentice committee recommend him for membership he must be admitted to the union as an apprentice member.

Article I, Section 11: Beginning with the second year, apprentices must be in possession of an apprentice working card issued by the union.

Article I, Section 19: At least two members of the local union must be regularly employed as journeymen before the employer can engage an apprentice.

Article V, Section 11: All foremen and journeymen employees must active members in good standing of the union.

Article VII, Section 1: Only members of ITU shall be permitted to operate the various composing room machines and devices used to process the products thereof.

Article VII, Section 5; Article VIII: Only members in good standing of ITU may be employed in installing, operating, maintaining, servicing and repairing the various machines and other mechanical devices used in composing, imposing, processing and casting of typing, type matter, slugs and other material of any kind, whether operated mechanically or automatically and wherever located.

Article VII, Section 6: Only members in good standing of ITU or the constitutent local thereof may be employed upon all work necessary to processing the product of photo type setting machines.

Article VII, Section 7: Only members of ITU may be employed to perform duties in the paste makeup operation using reproduction proofs.

Article V, Section 9; Article X: A member may select a substitute in his absence from work and such substitute shall be a member of the union and selected in accordance with the priority standing system of members established and maintained by the ITU local union and posted in its chapel.

Article X: In filling vacancies created by the absence of an employee for more than 30 calendar days only a member of ITU or the constitutent local may be employed and such employee shall be selected in accordance with the priority system established by the local.

Article V, Section 1; Article X: Any foreman filling a vacancy must give priority to the substitute listed on the priority list established by the local as oldest in conti

nous service, and the foreman shall be governed by provisions of the ITU General Laws.

Article V: In decreasing or increasing the work force the foreman shall be governed by the ITU General Laws and increase or decrease the force in accordance with the priority system established and maintained by the local union.

Article V, Section 8: Discharged members of the ITU shall have the right to appeal in accordance with the ITU laws and the right to challenge the fairness of any rule of the employer which caused his discharge.

The Meetings in 1956

The first meeting on the above proposals was held about October 14 (Steele fixed the date as about October 24), at which time only the jurisdiction and general laws clauses were discussed. In substance Steele stated the Union representatives took the position the clauses must be taken as submitted while Mahoney said the Company representatives termed the clauses as "key points" and it would be useless to discuss other proposals until these clauses were settled. The meeting concluded with the Company agreeing to submit a counterproposal.

The next meeting was held on November 1, when the Company presented its counterproposal. In this document the Company, after pointing out that the key clauses should be settled before negotiating on other contract proposals, offered to grant the Union jurisdiction over all composing room work including, "but is not limited to," the classifications set forth in the last agreement. The Company also agreed to the proposal on general laws "to the extent that they are negotiated and become a part of the contract." The counterproposal concluded with an offer to negotiate for new language concerning certain provisions in the prior contract, in the event the parties reached agreement on the

key clauses. The Company representatives, as related by Steele, inquired if there was any chance of reaching an agreement without the Union's language on jurisdiction and general laws and Quinn answered in the negative. Quinn further stated that the Union was tired of working without a written contract and in order to have a written agreement "it must contain language approved by Indianapolis, the ITU headquarters, and that was it." Mahoney testified that although the Union representatives were ready to immediately reject the counterproposal there was some discussion particularly with respect to negotiation of individual general laws. The Union representatives took the position they would negotiate anything into a contract that would give proper protection "even to substitute paragraph for anyone of the general laws." On cross-examination Mahoney stated they would not negotiate the general laws *per se* and that the general laws prohibit negotiation thereon. The meeting ended with the Union agreeing to consider the counterproposal.

Shortly after this session the Union representatives presented the counterproposal to the members who rejected the same and instructed the representatives to negotiate on the original proposal.

On November 7 or 8, the parties again met. At this time the Union representatives stated the counterproposal had been rejected by the membership and they, the representatives, had been sent back for an approvable contract. Mahoney explained that the term approvable contract meant approval by the ITU. According to Steele the Union insisted the jurisdiction and general laws provisions must be accepted while Mahoney said he did not understand that the ITU insisted upon the jurisdiction clause as written and that the general laws must be included, although he knew of instances where the provision was not required because the laws were incorporated into the contract. When the

Union asked the Company to negotiate on other provisions of the contract, Phillips replied they would not refuse to discuss terms, but the Company would not grant the jurisdiction and general laws clauses as contained in the Union's proposal. Phillips said he could see a possible impasse and that the Union could take any action it desired but if they went on strike, "We will give you the God damnedest strike you ever saw." Apparently, the meeting ended on that note.

At the meeting of November 29, the Company announced that it was considering the introduction of teletypesetter type as a means of reducing costs and was willing to give the union jurisdiction over the insertion of tape into the machine and the handling of the product after it came through the machine. However, the Company would not agree to any curtailment of the amount of tape used or the manner in which it was used. The Company spoke at length on jurisdiction and pointed out there was no need for the Union's proposal since the Company had no intention of introducing any new processes, except perhaps the teletypesetter. Although the Union suggested a clause-by-clause discussion of its proposal the suggestion was not followed by the Company. The Union also accused the Company of using the key clauses as a wedge to prevent discussion of other contract terms, which Steele denied.

The parties then met on December 6, and their positions were substantially the same as stated at the previous meeting. Mahoney expressed the desire to maintain "vertical priority," or seniority, for the composing room employees and hoped the parties could reach agreement, preferably a written contract, which would preserve that system. There was also a general discussion on the teletypesetter operation with the Company asserting it had the right to install and operate any processes in any manner it so desired.

THE MEETINGS IN 1957

About January 8 or 10, the parties held their first meeting and LaMothe accompanied the Union representatives. Quinn explained that the Local felt an impasse had been reached so they requested Randolph to assist them and he sent LaMothe for that purpose. LaMothe, according to Steele, asked the Company to state its position and they replied it was basically the same as it had been for the past 2 years. The Company likewise inquired if there had been any change in the Union's position and LaMothe said, no. The Company then specifically asked about jurisdiction and general laws and he stated "the Union language must be taken." Mahoney said that LaMothe brought up the subject of the Company's counterproposal of October 31, and Phillips replied it had been rejected by the Union; that the Company was standing on its counterproposal and the Union on its original proposal. While most of the time was devoted to a general discussion of preceding events, the Company offered to submit a "non-introductory clause," that is, a provision specifying new processes which would, or would not, be introduced during the term of the contract. LaMothe, as related by Steele, then asked about the general laws and the Company responded they would be willing to negotiate them individually. LaMothe rejected the offer and stated he would notify the Federal and State mediation services that the parties had reached a stalemate.

About January 17, the Company presented its "non-introductory clause" to the Union, wherein it restated the jurisdiction provision in its counterproposal and added; (1) the Company was willing to give the Union full jurisdiction over all composing room work and (2) it pledged, for the duration of the contract, not to install Fotosetter, Photon, Linofilm, Monophoto, Coxhead Line, Filmotype, Typro or Hadego operation. I all respects the counterproposal remained unchanged.

On January 22, the mediators help separate meetings with the Company and the Union. The mediators, after meeting with the Union, informed the Company that the disputed clauses would have to be settled first and that the Union wanted a signed contract under which they could operate. The Company advised the mediators they were willing to make a liberal wage settlement, but they could not accept the Union's jurisdiction and general laws clauses because they were illegal. The mediators reported the Company's position to the Union who stated they would ask for strike sanction at a membership meeting the next day, but agreed to meet with the Company on January 30. The mediators then informed the Company of this action and they agreed to a meeting on the above date. At the membership meeting it was agreed to ask the ITU for strike sanction.

On January 30, the parties met, after conferring separtely with the mediators. At both the separate and joint meetings there was some discussion as to what would happen in the event of a strike and Hanson told the mediators and the Union that the paper would continue to publish and the matter would be presented to the National Labor Relations Board with the request that contempt proceedings be initiated in the Court of Appeals for the Seventh Circuit. At the joint meeting Hanson acted as spokesman for the Company and LaMothe was present with the Union representatives. Hanson said the Company would not be bludgeoned into a contract in conflict with the Taft-Hartley law and even if there was some way of working out the jurisdiction clause the Company would not take the general laws *in toto*. He further stated that the Company was willing to negotiate an agreement but many of the Union's contract clauses were illegal. During a discussion between Hanson and Mahoney on the Company's failure to go into the Union's entire proposal, Mahoney complained that the Company's counter-proposal was very sketchy. Hanson stated he would give

the Union a complete and legal counterproposal and the meeting ended. Following the meeting LaMothe asked the mediators to request the Company president or published to participate in the negotiations. The mediators reported back to the Union that they did not believe there was much chance of either of these individuals joining in the negotiations.

On February 6, the Company submitted a complete counterproposal to the Union covering hours, wages and conditions of employment. In this proposal the Company offered to preserve the representation of the Union over such skilled work as had been normally performed in the composing room prior to January 1. The proposal also provided that all authority and control in the composing room shall be vested in the foreman as a representative of management, but eliminated the requirement contained in the last agreement that the foreman be a member of the Local. The counterproposal contained no provision for inclusion of or operation under the general laws.

On February 8, the parties met separately with the mediators and in joint session. At these meetings the Company and the Union maintained their former positions in respect to the jurisdiction and general laws clauses and the Company made a firm offer of its "non-introductory clause." During the joint meeting Hanson declared that an impasse had been reached (Mahoney could not remember anyone denying his statement) and proposed that the Company post a notice covering hours, wages and working conditions, which notice was read to the Union. The Union objected to the notice, pointing out their experience with the 1955 wage increase, and Hanson stated he was not attempting to trap the Union into negotiating but simply desired to discuss the contents of the notice with them. The parties then discussed wages. In its original proposal the Union requested a $9 per week increase on a 1 year contract. In the course

of the meeting the Union told the mediators that on a 2 year contract they would take $6 and $6 each year and the Company informed the mediators it would consider $4 and $3 increases. During the discussion of the notice the Union asked if the Company would consider $4 and $4 and they said they would and announce the decision in the notice. At the suggestion of the Union, the Company agreed to eliminate the termination date and to include certain other terms relating to extra slide day, funeral leave and jury duty. Mahoney pointed out there was nothing in the notice pertaining to priority and Hanson explained it was not practicable to include the lengthy priority system but guaranteed the system would be continued. This was satisfactory to the Union. LaMothe stated the notice was "no contract" and Hanson agreed it was not a contract but something under which the Union could operate.

No further meetings were held until November.

On February 9, the notice, as discussed, was posted and provided for a $4 weekly increase retroactive to January 1, and a similar increase effective January 1, 1958.

By letter dated February 14, the Union informed the Company that at a special meeting of the Local on February 13, the membership voted that the Union would not object to acceptance of the wage increase or other improved working conditions by its members, with the understanding that the acceptance in no way binds the Union for any length of time to any contract of any kind. The letter concluded with the statement that the Union was willing at any time to continue negotiations for a complete contract covering wages and all other terms mutually satisfactory to the Union and the Company. At the meeting of February 13, Quinn advised the members that the Local had not obtained strike sanction from the ITU. Mahoney also told the members that absent the jurisdiction, general laws and foreman

clauses, the terms set forth in the notice appeared to be reasonable and fair.

Events Occurring Between the February and November Meetings

Mahoney cited 3 instances which arose under the priority system.

In April, as customary, the chapel chairman, the Union representative in the shop, submitted to foreman Madden the vacation schedule arranged according to priority. Madden complained that all make-up men would be off at the same time and insisted that one of the employees, Swenson, change his plans. The Union protested many make-up men were available and this action constituted a violation of Swenson's rights. However, the matter was straightened out and Swenson was given his vacation in accordance with his priority.

The second incident involved a machinist "out of priority" which was resolved.

The last incident involved O'Toole who worked as a substitute on the night shift from about June to October when he transferred to the day shift. Madden then put him to work as an ad man, which he told Madden he was not competent to perform. While this was Madden's prerogative it had been the rule that a man could not be discharged for incompetency in performing a job for which claimed no competence. In October, O'Toole was discharged for incompetency as an ad man. The Union considered this action a serious violation of the priority system affecting the jobs of all the men. The Union thereupon invoked the grievance procedure of the joint standing committee and meetings were held in October and November. Apparently, the committee was unable to reach a conclusion and the matter seemingly was being prepared for arbitration when the strike occurred.

On September 6, Mahoney, then president of the Local, addressed a letter to Howard M. Booth, publisher, requesting a meeting for the purpose of continuing negotiations and to discuss "serious alterations" in working conditions. On September 25, Mahoney again wrote the Company for a meeting and if it failed to do so, the Union would report the matter to its membership for whatever action it might deem necessary and notify the conciliation services.

Receiving no response to his letters, Mahoney telephoned Booth and asked if his silence indicated a refusal to bargain and Booth said no, that he would take up the matter with Steele. Shortly thereafter Steele called Mahoney and stated Booth was sending him a letter, which he would like to explain or qualify. He then stated the Company's position was the same and it would be fruitless to negotiate on the basis of the Union's proposal. Mahoney said under the circumstances the parties would never get any place but the Union was still ready to negotiate a complete, approvable contract.

Following this conversation the Company sent a letter to the Union, dated September 30, stating it did not consider this to be a reasonable time for negotiating.

On November 5, the Union wrote the Company it was not satisfied with its reply and requested an early meeting. The parties then made arrangements to meet.

The Meetings of November 26 and 27

At the November 26, meeting Hanson acted as spokesman for the Company and Charles M. Lyon, first vice president of the ITU was spokesman for the Union. Hanson told the Union that the Company was willing to sign a legal contract but it could not accept the Union's provisions on jurisdiction, general laws and foreman. Concerning the foreman's clause, Hanson said the Company had no objection to his being a member of the Union but could not agree to

make union membership mandatory. Lyon replied that a contract containing these provisions would be legal if the Company agreed to it and mentioned the fact that other newspapers had agreements similar, if not identical, to the Union's proposal. Hanson denied that acceptance of these clauses would make them legal. The parties also discussed the jurisdiction clause and its application to employees, artists, engaged in a process known as "paste-up" or "paste make-up." The artists, as asserted by the Company, had performed this work for many years, did not work in the composing room, were neither members of nor represented by the ITU for the purposes of collective bargaining and were not included under the jurisdiction provision of the last agreement. Weinrich stated that the Union did not claim or ask to represent the artists, or any other employees outside the composing room but did request that make-up work be brought into the composing room. In this respect Mahoney informed the Company that the Local had trained men for this process since it had sent a man to Indianapolis to learn paste make-up, that he had trained a number of employees, and the Union wanted the work for its members. Mahoney added the paste make-up was nothing but a substitute method of doing work which had always been performed in the composing room and while the Union made no claim over artists it considered the process as properly defined within the printing craft and within the meaning of its jurisdiction clause.[1] Hanson said it was not a question of Union jurisdiction but a question of representation. The parties also discussed the Union's proposal and Hanson said it did not coincide even closely with the Company's wishes and it could not operate economically under such a contract. When Hanson declared the parties could reach

[1] This controversy was the basis of the proceedings under Section 10 (k) of the Act.

an agreement if the Union withdrew, or they could resolve the three key clauses, Lyon explained why the Union wanted a workable contract and pointed out these clauses had been accepted by other newspapers. Lyon informed the Company the Union had taken a strike vote and Hanson responded that if the Union struck he would present the matter to the Board and seek to have the Union adjudged in contempt of the decree entered in the Courts of Appeals for the Seventh Circuit. Lyon said if a strike occurred it would be by individual action of local members. Hanson requested the Union to give further consideration to the Company's counterproposal, which the Union agreed to do, and the parties arranged to meet the following day.

On November 27, the parties went over the proposal and counterproposal and were in substantial disagreement on most provisions. Hanson again questioned the legality of the three key clauses and the Union replied it did not intend to withdraw or change the language of those clauses. When Hanson offered to arbitrate the provisions Lyons rejected the offer, stating the Union would not have submitted the clause if it thought the provisions were illegal. The parties concede an impasse was reached. The Union then caucused and when the meeting resumed Lyon announced the matter had been placed in his hands and because of differences of opinion regarding the legality of certain questions, because the Union was dissatisfied with wages paid and hours worked, "We say good day and good bye."

On November 29, all the employees in the composing room, 195 persons, went on strike.

Events Subsequent to the Commencement of the Strike

On January 16, 1958, Mahoney wrote the Company that the foreman clause was not and is not an issue in the "lockout" and that the Union has been and is willing to enter

int an agreement without that provision if other issues are sat factorily adjusted.

By letters dated January 24, Randolph and Mahoney informed the Company they were withdrawing the demand for a clause providing the employment of a Union foreman.

On February 8, Mahoney and DeLorme, a Local official, met with Steele and Bowditch. Mahoney inquired if the matter could be resolved locally and Steele replied it seemed impractical because they had had many negotiating meetings and the Union rejected its counterproposal. He further inquired if the Company was committed to go before the Board and Steele stated that was the orderly procedure to follow and, in addition, the Company had taken steps to fill vacancies in the composing room. Steele also questioned Mahoney's authority in view of Lyon's statement at the last meeting and Mahoney said he had authority to discuss the matter from the ITU and that the ITU would have to approve any means of settling the dispute.

No further meetings were held between the parties.

THE HAVERHILL CASE

For many years, and all times material herein, all employees in the composing room have been and are members of Local 38. At the commencement of the hearing in the District Court the General Counsel stated, and his statement is accepted by counsel for the Union, that the last agreement between the Company and the Union expired in 1947.

In December 1956, Local 38, submitted a proposed contract to the Company containing, *inter alia*, clauses on jurisdiction, general laws and foreman identical to those set forth above. Thereafter the Company and the Union met on eight occasions, namely, December 1956, and January, May, October 28, and November 8, 20, 21, and 23, 1957. During the period December 1956 through November 8,

1957, negotiations were conducted by local personnel with John Russ, president, and William H. Heath, mechanical superintendent, representing the Company and Anthony Rigazio, president of Local 38, and a committee representing the Local. At the meeting of November 8, Rigazio announced that future negotiations would be conducted by ITU officials and he assumed the Company would wish to call in representatives of the New England Daily Newspaper Association to meet with its representatives. At subsequent meetings Lyon and LaMothe represented the Union while Phillips and Parry represented the Company.

In the first phase of the negotiations, December 1956, to November 8, 1957, the Company objected to the Union's jurisdiction clause, which covered new processes not in use, and this provision was the principal subject of discussion throughout the meetings. The Company also objected to the general laws clause for the reason that acceptance of that provision would be tantamount to agreeing to the Union's jurisdiction clause. While the Company objected in principle to the foreman clause, Heath informed the Union he would not make it a decisive issue because he was satisfied with the present foreman and had no intention of making any change. The Company opposed the jurisdiction clause on three grounds, which Heath explained to the Union, as follows: (1) the assignment of personnel to machines and processes was the responsibility primarily of management, not the Union, (2) an agreement now to employ ITU members in the future to operate processes and machines not presently in use would expose the Company to conflict with other unions claiming jurisdiction over such processes, and (3) since these processes were revolutionary in nature it would be foolhardy for the Company to agree in advance which union would supply operators for the processes. The Union, according to Heath, took the position that the new processes set forth in its

jurisdiction clause were substitutes for traditional composing room processes and Heath admitted the correctness of this statement insofar as it applied to some processes with which he was familiar. However, he expressed no opinion as to some new methods for lack of knowledge of the processes. The Union further claimed that the new processes could be better performed by printers and Heath responded he did not know which craft, printers, engravers, stereotypers or lithographers, was best qualified to perform these new methods. In the past, he stated, when substitutes processes were introduced the Company had shown its willingness to use local printers to do the work, but the Company was unwilling to grant jurisdiction in the future. Heath said there was never any mention of nonunion men performing any of the new processes.

In general the parties did not discuss the economic provisions of the Union's proposal for the reason, as explained by Russ, discussion on these subjects hinged on other contract provisions, jurisdiction, general laws and foreman, and they were not discussed because of the time element. Russ admitted that the Union mentioned wages at the May and October meetings and while the Company stated it was willing to discuss this topic there was no discussion for the reason stated above. The Union representatives also mentioned wages as they were leaving the November 8 meeting. The Union's vacation proposal was discussed during the negotiations. Heath stated that under Company policy employees with 10 or more years service were granted 3-weeks vacation but this policy did not apply to composing room employees because only these employees had the "slide day." Russ explained that under the slide day practice if an employee's regular day off falls on a holiday he is given an additional day off with pay, or if he works he is paid premium rates. The Union in its proposal asked an additional weeks' vacation in addition to the slide day. The

Company told the Union it would not agree to 3-weeks vacation and the slide day but would accept the vacation demand without the slide day. The parties did not reach agreement on this provision.

In January and July 1957, the Company gave wage increases to all its employees including those in the composing room, without any notice to the Union. Following each increase the Union wrote the Company it did not object to its members accepting the voluntary increase and requested continuing negotiations for a complete contract. The parties maintained their respective positions on all issues throughout the meetings, except that at the November 8, the Union changed its proposal in respect to the term of the agreement and wages. Heath said the Company offered to submit a written counterproposal to the Union but his offer was turned down.

The November 1957 Meetings

On November 19, the Union held a meeting of its membership at which the employees voted 24 to 0 in favor of striking.

Early the next morning the composing room employees engaged in a work stoppage for almost 2 hours because no negotiation meeting had been scheduled. Heath informed Parry of the stoppage, who arranged to meet with Lyon at 2 o'clock that afternoon. Phillips and Parry conferred with Russ and Heath from about 11:30 to 2 o'clock for the purpose of ascertaining the Company's position in regard to the Union proposals. The group discussed jurisdiction, general laws, foreman, vacations, hours and other provisions, some of which they went over quickly. Parry stated he had knowledge of the Company's position in respect to the general laws and foreman clauses through previous discussions with Heath and Russ, Sr., deceased, and meetings with Lyon and LaMothe, the last meeting being held some

time in 1955. As a consequence Parry knew that since 1948 the Company had refused to agree to incorporate the general laws in any contract because of the closed shop provisions contained therein. At their meeting Heath expressed the opinion that the general laws were in violation of Taft-Hartley. Parry did not know the Company's position on the jurisdiction clause for that clause was first presented by the Union about December 1955. The group discussed the jurisdiction clause which "was one of the problems" and the general law clause.

That afternoon Phillips and Parry met with Lyon and LaMothe. Lyon asked Phillips if he had read the Union's proposed contract and Phillips replied that he had. Phillips, as related by Parry, stated there were a number of illegal provisions in the proposed contract and he would like an opportunity to give the Union a counterproposal. Lyon told him, "What you might consider legal and what I might consider legal would be two different things." Phillips remarked, "for once . . . we are in agreement." Lyon ended the meeting by saying he was "going to pull the boys out." Phillips testified he had known Lyon for about 30 years and that they had engaged in numerous bargaining negotiations in the newspaper industry during which they had disagreed regarding the legality of the jurisdiction, general laws and foreman clauses. In view of their past experience Phillips understood that Lyon was standing on the contract as submitted, including the three provisions, and that Lyon understood the Company's offer would not contain these provisions. When Phillips remarked they were in agreement as to their respective positions, Lyon declared there was no use in wasting time, he was going to pull the men. The meetings, which lasted less than 10 minutes, then ended. Parry stated that following the meeting Lyon and LaMothe went to the composing room where Lyon spoke to the em-

ployees and about a minute later the employees left the plant.

The parties stipulated the composing room employees went on strike on November 20.

On November 21, the same parties, plus the Union scale committee, met at the request of Federal and State conciliators, who also attended the meeting. At this session the parties discussed the Union's proposed contract section-by-section but were unable to reach any accord on the economic or substantive demands therein. Most of the discussions at this meeting were directed to the jurisdiction and general laws provisions. Parry agreed to recognize the Union as the bargaining representative of the composing room employees exclusive of employees to operate new processes with which the Company was unfamiliar and had no plans for introducing into its plant. There followed a lengthy discussion on new processes and the possibility of conflicting jurisdictional claims by other unions, during which the Union stated they were interested in not losing any work for its members. Parry assured them the Company did not plan to lay off any employee based on jurisdiction that might come up in the future. He also pointed out that jurisdiction clause would preclude the Company's present use of tape perforated in Boston by United Press which it sent over leased wires and which was recut in the Company's news room. He further pointed out the Company was using "typro," which is featured tape or tape reproducing features which was actually cut in St. Petersburg and the jurisdiction language would prohibit the use of this tape. LaMothe said something could be worked out on the United Press service by way of limitation on the amount of tape or the use of all such tape not construed as features for which no extra charges were paid. The discussion on jurisdiction ended with the Company agreeing to propose definite language on this clause. The Company objected to the

general laws clause because it was another way of obtaining jurisdiction over new processes and some of the provisions which provided for a closed shop was illegal. Parry offered to negotiate each law individually as part of the contract and Lyon answered that the general laws were not negotiable and he would not take them up individually. Lyon, according to Parry, inferentially agreed certain provisions of the general laws might be in conflict with other laws and mentioned there was "savings clause" in the proposed contract.[2] Party stated the "savings clause" would be of little value since the Union's contract prohibited arbitration of the general laws and Lyon admitted they were not arbitrable. Lyon asserted that any general laws in violation of Taft-Hartley were suspended but no mention was made of any specific provisions of the general laws to be included in or excluded from the contract. There was also some inclusive discussion on the struck work clause and the right of employees to obtain substitutes. Lyon stated the Union had to have an "approved contract," that is one approved by the ITU.

On November 23, the parties again met, with the conciliators present. In accordance with his agreement to submit a counterproposal on jurisdiction, Parry advised that:

> The Publisher recognizes the Union as exclusive bargaining agent for all employees of the Publisher engaged in composing room work and any dispute that arises as to what constitutes composing room work shall be subject to arbitration as provided in this contract.

After some discussion as to the manner in which the impartial arbitrator should be selected, Lyon said the Union had to have the jurisdiction in the language set forth in its

[2] Article I, Section 8 of the proposed contract provided, nothing contained herein shall be construed to interfere in any way with the creation or operation of any rules not in conflict with law or this contract by any chapel or by the Union for the conduct of its own affairs.

proposed contract. There was no discussion of the general laws clause, other than the Company objected (and apparently did so at the November 21, meeting) to the provisions in the proposed contract and the general laws which provided the foreman "shall" be a member of the Union. Parry explained that if the Union expelled the foreman, who had no protection under the Act, the Company would be forced to discharge him and replace him with a Union member. The Union responded that the foreman had always been a Union member and if he was forced to resign he might lose many benefits as a consequence of his membership. Parry suggested that the clause be changed so that the foreman "may" be a member, which was rejected by the Union. The vacation demand was discussed with each party maintaining his original position, the Union asking for 3 weeks plus slide day and the Company offering 3 weeks without slide day. At the previous meeting wages were mentioned, and Lyons characterized economic issues as secondary, so at the instant session Lyon asked Parry if he had any counterproposal on wages. At the time of the strike the rate was $96.30 a week and the Union's proposed contract called for $109.55 per week. Parry pointed out the Company had granted increases in January and July totaling $4.50 a week and offered $3.50 per week, bring the scale up to $100, which was not acceptable to Lyon. At the suggestion of the conciliators the parties summarized the basic issues as follows:

> First was the limitation of, restriction of the use of teletype tape. The second was jurisdiction over new processes. And third was refusal of the employer to agree that the foreman shall be a member of the union, and the fourth was refusal of the employer to accept the general laws of the International Typographical Union.

Parry offered full arbitration on all these issues but Lyon refused his offer. The meeting then ended.

Randolph testified that the general laws prohibit any arbitration thereof by local unions,[3] but the prohibition "has no reference to the arbitration of the facts of the dispute. Its only whether or not they would arbitrate whether or not to exclude the general law from a contract, or to arbitrate whether it could be effective or not." Randolph further testified that, in accordance with the ITU by-laws,[4] he designated Lyon as the ITU representative in the dispute and that the ITU sanctioned the strike.

By letters dated January 17 and 24, 1958, the Local and the ITU, respectively, informed the Company that the demand for the foreman clause was being withdrawn.

In brief, Randolph's testimony in the *New York Mailers* case (November 14, 15, 1957), discloses that for many years it was the custom of the ITU to include a provision in agreements that matters not covered by the contract shall be covered by the general laws. Subsequent to the enactment of Taft-Hartley the clause was changed to include the general laws "not in conflict with this contract or with Federal or State law shall govern the relation between the parties on conditions not specifically enumerated herein." However, Randolph said it would not be possible to spell out what general laws might be validly applied under particular circumstances, but the employer or the local union could seek the advice of the ITU on these questions. He

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[3] Article II, Section 3, states "It is imperatively ordered the executive officers of the International Typographical Union shall not submit any of its Laws to arbitration, nor shall any subordinate Unions arbitrate whether or not any General Law of the International Typographical Union is effective."

[4] Article XIX, Section 1, provides: "In the event of disagreement between a subordinate union and the employer which in the opinion of the local union may result in a strike, such union shall notify the President, who shall in person or by proxy investigate the cause of the disagreement and endeavor to adjust the difficulty. If his efforts should prove futile, he shall notify the Executive Council of all the circumstances, and if a majority of said Council shall decide that a strike is necessary, such union may be authorized to order a strike."

further testified "our general laws are the basis of union shop operations and have been so throughout the history of the ITU." In this connection he said that local unions must clear any proposed contract with the ITU before submission to the employer and, if agreement is reached, it must again be submitted for approval before final execution. Randolph concluded by stating the union shop allowed under the Act would permit the employer to determine not only the character, health and competency of an employee but he would have a method of determining who would be members of the Union, which "is entirely repugnant to the history and tradition" of the ITU.

CONCLUSIONS

The Refusal to Bargain

Although it is conceded that the parties reached an impasse on the jurisdiction, general laws and foreman clauses it strikes me that the Respondents' demand for the jurisdictional clause covering many classifications for future work or processes was the primary clause of the disputes. Thus, in the *Worcester* case, the Company had collective bargaining agreements with the Union for many years and their last agreement included clauses incorporating the general laws therein and the employment of union foreman. In the *Haverhill* case Heath testified concerning the negotiations that the jurisdiction demand "was the basic issue from beginning to end." Heath explained the Company objected to the general laws clause for the reason that acceptance of that provision meant automatic acceptance of the jurisdiction clause, although he added that the general laws clause embraced more than the jurisdiction provision. To eliminate any doubt on this point the Court inquired of Heath;

Your concern to the union, if I understand it, was that

Section 8 [the contract demand for the general laws] and Section 5 [the jurisdiction provision] were two ways of expressing the same thing that you didn't want to take.

Heath replied;

Jurisdiction, that is right.

Again, when asked by the Court if he expressed "any objection to Section 8 that was independent of Section 5," he answered;

I had no occasion to, your Honor, because discussions between management and the union almost exclusively hinged on the issue of jurisdiction.

Therefore, the first question to be resolved is whether the units sought by the Respondent Unions under their jurisdiction clauses are appropriate for the purposes of collective bargaining under the Act. Here, of course, there has been no Board determination of the appropriate unit but on the basis the record herein and the bargaining history I have no difficulty in finding that a unit comprising all composing room employees, subject to the statutory exclusion of foremen, in the work classifications covered in the last agreement between the Union and *Worcester* (*supra* p. 6) is appropriate for the purposes of collective bargaining within the meaning of Section 9 (c) of the Act. (*ANPA*, 104 NLRB 814-815). Of course, Haverhill and the Union have not had any collective bargaining agreements since about 1947. However, the evidence plainly shows that negotiations were conducted on the basis of a unit consisting of composing room employees and the Board has held such a unit, excepting foremen, to be appropriate in the newspaper industry. (*ANPA*, *supra*) I therefore find that all composing room employees, excluding foremen, of Haverhill, is appropriate for the purposes of collective bargaining within the meaning of Section 9 (c) of the Act. There is no question that the respective Respondent Unions repre-

sented a majority of the employees in these units. Accordingly, I find that Local 165 and the ITU and Local 38 and the ITU were, and are, the duly designated bargaining representatives within the meaning of Section 9 (a) of the Act of the employees in the units herein found to be appropriate. (*ANPA*, 104 NLRB 816.)

In general the Board has refused to include in a unit nonexistent or future job operations. Thus, in *Hamilton Watch Company* (118 NLRB 591, 592, footnote 4) the Board declined to include factory clericals in a production and maintenance unit for the reason that the employer had no employees in that classification and did not contemplate hiring any such employees in the immediate future. (See also, *Combustion Engineering Company*, 117 NLRB 1589, 1593, *Koppers Company, Inc.*, 117 NLRB 422, 427, footnote 9.) Here the evidence is plain that the Companies had no intention of introducing the new methods or processes over which the Unions were asserting jurisdiction. Moreover in the *Worcester* case, the Company submitted a counterproposal in which it agreed not to introduce certain methods during the term of the agreement, which proposal was rejected by the Union. It is undisputed that the Respondent Unions insisted throughout the negotiations that the jurisdiction clause must be accepted in the language submitted. Counsel for the Respondents contend that the Unions only sought to bargain on behalf of those employees in the composing room unit that they historically represented. Further, counsel contend, in the absence of a Board certification, the parties have the right to determine the scope of the unit and that a union may ask and strike for a contract provision relative to work not presently in existence. The plain answer to the latter contention is that the Companies refused to accept the Union's designation of the bargaining unit, which I have found to be inappropriate, but nevertheless the Unions insisted upon conducting negotiations on

the basis of that unit. Nor do I agree with counsel that absent a prior Board determination of the unit that a party may insist upon bargaining in a unit of his own choice, irrespective of its appropriateness. In *Eastern Massachusetts Street Railway Company* (110 NLRB 1963) the Board on the record before it, and without prior unit determination, found that a company-wide unit of all operating and maintenance employees (regardless of the division where they worked) to be an appropriate unit and that the Association was the representative of all the employees in the unit. The Board further found (page 1966-1967) that the Company in dealing with the Lowell Local as representative of a mere fraction of the unit, when the Association had the right and was insisting upon representing all the employees in the unit, thereby refused to bargain with the majority representative in an appropriate unit in violation of Section 8 (a) (5) of the Act. In granting enforcement of the Board's order the Court of Appeals for the First Circuit (235 F. 2d 700) held the bargaining unit determination was within the powers granted under Section 9 (b) of the Act and the appropriateness thereof fully supported by the evidence. The Court summarily rejected the Company's contention that assuming the unit determination was proper, still there was no violation of Section 8 (a) (5) because the Company believed in good faith that the smaller unit was appropriate.

In *Texolite, Inc.*, (*International Brotherhood of Electrical Workers*, 119 NLRB No. 232, 41 LRRM 1392) the Board stated:

> A Union which is the statutory representative of employees in an appropriate unit has the obligation, as does the employer, to bargain in good faith with respect to terms and conditions of employment for employees in that unit. A refusal to enter into a collective bargaining agreement, unless the other party to the negotiations agrees

to a provision or takes some action which is unlawful or inconsistent with basic policy of the Act is a refusal to bargain in violation of the Act. Hence a union which insists upon bargaining only for an inappropriate unit does not fulfill ts obligations to bargain as defined in the Act. (*Citing American Radio Association*, 82 NLRB 1344, *Douds* v. *International Longshoremen's Association*, 241 F. 2d 278 (C. A. 2)).

In view of the foregoing findings I cannot accept the Respondent's contention that they were doing nothing more than bargaining on behalf of the composing room employees for work traditionally performed by these employees. Moreover, the Board has resolved any question that might have arisen in that respect in its Decision and Determination of Dispute in proceedings under Section 10 (k) of the Act involving *Worcester* and the instant Respondents. (121 NLRB No. 101, 42 LRRM 1444). Following the strike, *Worcester*, filed a charge on December 2, 1957, alleging that the Respondents had been and were engaging in activities proscribed by Section 8 (b) (4) (D) of the Act. In substance the charge alleged that the Respondents had induced and encouraged the employees of *Worcester* to engage in a strike or a concerted refusal in the course of their employment to handle or work on goods with an object of forcing or requiring *Worcester* to assign particular work to employees who were members of Respondent Unions rather than to employees in another trade, craft, or class. Briefly, the Board found that at least a portion of the Respondents' purpose in striking was to resolve the "disagreement" over the work jurisdiction clause by forcing or requiring *Worcester* to accept that clause. Continuing, the Board stated that if the Respondents' jurisdiction clause required assignment of work to its members rather than to employees in another labor organization, or in another trade, craft, or class the strike was for an unlawful object within the mean-

ing of Section (8) (b) (4) (D). The Board found that an object of the strike was to force or require *Worcester* to assign to Respondents' members working in the composing room the paste-makeup work which it had assigned to artists who were not members of the Respondents and who had been performing the paste-makeup operations for many years. The Board thereupon entered its determination of the dispute on that basis.

I have no difficulty in concluding that by insisting upon acceptance of the Union foreman clause brought the negotiations the Respondent Unions refused to bargain in good faith as required by the Act. In the *ANPA* case, both the Court and the Board held that the Unions by engaging in coercive conduct designed to compel employers to continue to hire only union foremen violated Section 8 (b) (1) (B) of the Act.[5] In fact the Court stated the Union' "insistence on union foremen was a very important part of their scheme for the maintenance of the closed shop conditions." (193 F. 2d 782, 796, 805; 84 NLRB 951, 957-959). Here the Respondents urge that the evidence negates the presumption that union foremen will discriminate in favor of union men, as held in *Enterprise Industrial Piping Company* (117 NLRB 995)[6], for in the *Worcester* case the Union had difficulties with the foreman. In this connection Mahoney, as appears above, cited 3 instances which arose under the priority system, 2 of which were resolved quickly and the remaining one, the O'Toole discharge, was being processed at the time of the strike.

[5] The section provides; it shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce . . . (B) an employer in the selection of his representative for the purposes of collective bargaining or the adjustment of grievances.

[6] In this case the Board, in accordance with well established policy, held that where employers entrust their hiring to foremen who are members of the Union and bound by its laws, they in effect agree with the union, through the foremen who are agents of employers and the Union, to operate under a closed-shop arrangement, which is prohibited by the Act.

Mahoney testified that in his opinion the O'Toole discharge was one of the reasons why the members voted to strike but admitted *Worcester* was not informed this matter was one of the causes of the strike. While these matters were important to the Local I do not see how they materially affect the issues herein.

As in the case of the jurisdiction and foreman provisions the Respondent Unions demanded the general laws be accepted *in toto* and summarily rejected all offers to negotiate the laws individually or to arbitrate any of the controversial provisions therein.

The General Counsel contends that some 16 provisions of the general laws create illegal hiring conditions and by insisting upon acceptance of these laws as a condition precedent to a contract, and by striking to enforce these demands, the Respondent Unions violated, *inter alia*, Section 8 (b) (3) of the Act. On the other hand counsel for the Respondents assert the general laws challenged are not illegal on their face, that under the "savings clause" only those laws which are not in conflict with the contract or civil law are included, and the laws thus excluded are protected as internal rules of membership by the proviso to Section 8 (b) (1) (A) of the Act.

At the outset I wish to point out that the demand for observance of the general laws set forth in the complaints cannot be treated as an academic subject, without any particular significance or meaning but must be considered in the light of their adoption, purpose and enforcement and evidence herein. Generally speaking Randolph's testimony discloses that undoubtedly the ITU has considered the general laws as the core of its organization for, as he stated, "our general laws are the basis of union shop operations and have been throughout the history of the ITU." It is equally clear from Randolph's testimony that his version of the union shop is not the union shop permitted under

the Act. Nor is there any question that the experienced bargaining representatives in these cases entertained any doubt concerning the nature of the Unions' demands for inclusion of the general laws and the applicability, scope and effectiveness of these laws. Accordingly, I consider the demand for acceptance of the general laws challenged in this background and the record herein.

Although the contracts defines "employees" as journeymen and apprentices and provide that only journeymen and apprentices shall be employed there is no mention of membership or nonmembership of journeymen in the ITU. The general laws (Article V, Section 11) state that all foremen and journeymen must be active members in good standing in the Union and further declare (Article VII, Section 1 and 5 and Article VIII) that only members shall be allowed to install, operate or service the various machines and devises used in the composing room. While the contracts do not provide that union membership is a condition of achieving journeymen status, and Randolph testified to this effect, they contain no provisions as to membership or nonmembership requirements once journeymen status has been established. As the general laws require all journeymen to be active Union members, the term "journeymen" in the contracts must be held to refer only to journeymen who are Union members. Accordingly, the demand by the Respondent Unions, that the Companies agree to employ only journeymen in their composing rooms constitutes nothing less than a demand for a closed-shop provision. Further, the Board's decision in the *Worcester* case, *supra*, demonstrates that the Respondent Unions were not only seeking composing room work for their members but also paste-makeup work which had been assigned to other employees, nonmembers of the Union, by the Company. I also conclude that the general laws requiring the foreman to be an active member of the Union is part of the Unions'

strategy to maintain closed-shop conditions in the composing room. I therefore find that the general laws insofar as they supplement the jurisdiction and foreman clauses, specifically, Article III, Section 12; Article V, Section 11; Article VII, Section 1, 5 and 6, and Article VIII are illegal.

The remaining general laws alleged to be illegal cover apprentices and the priority system.

Since the proposed contracts contain many clauses relating to apprentices, which would govern the relationship of the parties on those subjects, I believe it appropriate to consider both the contract proposals and the general laws claimed to be illegal in this respect. In the *Worcester* case, Steele said the Company did not question the legality of the apprenticeship contract provisions but did oppose the demands on the grounds: (1) the Company wanted the right to pass on the competency of apprentice applicants rather than jointly with the Local and (2) the Company should not be required to advise apprentices to subscribe to and complete the ITU course in printing. In the *Haverhill* case, Heath could not recall any discussion on the apprenticeship provision and stated it has been traditional for the Union to accept a large measure of responsibility for the training of apprentices. When asked if he had any objection to the apprenticeship program at the plant, seemingly conducted under the general laws, Heath replied, "No, none at all. We had an excellent program."

Unlike the journeymen clause, I see nothing unreasonable, much less illegal, in the contract proposals and general laws covering apprentices. Certainly, there is nothing in these demands requiring apprentices to be Union members when hired or to acquire membership during the course of their employment. These provisions supercede any general laws to the contrary. In addition the testimonies of Steele and Heath refute the idea that the Companies had any substantial objections to the Unions' demands or the

apprenticeship program itself. The General Counsel specifies 5 general laws as creating unlawful employment conditions concerning apprentices only 2 of which, in my opinion require any comment. Thus, the requirement that "an apprentice must first be approved by the ITU local" (Article I, Section 4) is plainly inapplicable in view of the contract proposals and the record. The other provision attacked is that "Beginning with the second year, apprentices must be in possession of an apprentice card issued by the union." (Article I, Section 11) this law might appear to be illegal, except for the fact that the law is inaccurately stated in the complaint. As correctly quoted this section (G. C. Exh. No. 15, p. 82) states; "Starting with the second year apprentices *are entitled to* and must be in possession of an apprentice working card." (Underscoring supplied.) Even assuming there might be some ramifications or far-fetched arguments respecting the interpretation of this law, I am satisfied the evidence does not warrant the conclusion that the contract proposals or the general laws covering the apprenticeship program are illegal.

The proposed contracts have provisions touching upon priority, for instance the employment of substitutes by the foreman and reductions-inforce must be made on that basis, so the general laws (Article X) detailing the priority system are incorporated into the contracts. The general laws (Article X, Section 2) state that:

> Subordinate unions shall establish a system for registering and recording priority of members in all chapels, which shall be conspicuously posted or kept in a place with the chapel accessible to members at all times. The priority standing of a member shall stand as recorded.

I am convinced that the contract clauses and the general laws delegate exclusive control to the Respondent Unions in the establishment and maintenance of the priority system. The Board has held that such a delegation of power over a

seniority system is unlawful. (*International Brotherhood of Teamsters, etc., Local No. 41 (Pacific Intermountain Express Company)*, 107 NLRB 837, 841; *Chief Freight Lines Company*, 111 NLRB 22, 32; *Kenosha Auto Transport Corporation*, 113 NLRB 643.) If the cases did not go beyond this point and involved only the bare legal question of the legality or illegality of the priority proposals as supplemented by the general laws I would have no difficulty in resolving the issue. However, the evidence, as I view it, reveals that the Companies not only raised no objections to the priority system but, apparently, acquiesced in the continuance of the plan at their plants. This is precisely the position of *Worcester* for Steel, on cross-examination, testified as follows:

> Q. During the negotiations, Mr. Steele, did the Company say that vertical priority would prevail?
>
> A. Mr. Hanson stated that priority practices would continue.
>
> Q. And did the Company make any statement about what priority they were putting into effect, if any?
>
> A. Mr. Hanson said that the Company would continue to observe priority practices as they had been.

As appears above, Heath testified *Haverhill* opposed the general laws only insofar as they applied to the jurisdiction clause, and I fail to see any connection between the jurisdiction clause and the priority clause which would warrant the assumption that the Company thereby objected to the general laws on this ground. Under the particular circumstances I do not find the general laws bearing upon the priority system to be illegal as alleged in the complaints.

I cannot adopt the Respondents' contentions that the "savings clause" includes only the general laws "not in conflict with state or federal law." As related by Randolph there never has been any attempt to state which, if any,

of the general laws might be considered legal or illegal and plainly there is no evidence in the record remotely suggesting that the Respondents were not seeking to incorporate all the general laws, including those found unlawful herein, in the proposed contracts. Suffice it to say that a "savings clause" of this general character is ineffective to eliminate the illegal provisions of the general laws. (*N. L. R. B.* v. *Gaynor News Co.*, 197 F. 2d 719, 723-724 (C. A. 2) affirmed 347 U. S. 17; *N. L. R. B.* v. *Red Star Express Lines*, 196 F. 2d 78, 81 (C. A. 2); *Gottfried Baking Co., Inc., et al.*, v. *N. L. R. B.*, 210 F. 2d 772, 777, 780 (C. A. 2).)

I have considered the arguments advanced by counsel for the Respondents that the evidence fails to establish a violation of Section 8 (b) (3) of the Act. In essence counsel contend that the Respondents were earnestly attempting to negotiate lawful agreements with the Companies and that either party in bargaining negotiations may persist in his position, as they did, concerning any particular provision without violating his duty to bargain. Counsel rely upon Section 8 (d) and the decision of the Supreme Court in *N. L. R. B.* v. *American National Insurance Company*, 343 U. S. 395. In the *American National Insurance* case the Supreme Court held that the statute does not encourage a party to engage in fruitless marathon discussions at the expense of a frank statement of his position and that the Board may not, directly or indirectly, compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements. The Court also rejected the Board's theory that, apart from the good faith test prescribed in Section 10 (d), the Company's bargaining for a management functions clause was, *per se*, violative of the Act. Of course, there was no contention that the management functions clause was illegal and on this point the Court expressly stated: (405, fn. 15)

> Thus we put aside such cases as *NLRB* v. *National Maritime Union*, 175 F. 2d 686 (C.A. 2d Cir. 1949) (bargaining for discriminatory hiring hall clause), where a party bargained for a clause violative of an express provision of the Act.

The foregoing language makes it clear that the good faith test declared in Section 8 (d) applies only in situations where a party proposes and bargains for contract terms lawful under the Act and not, as found here, for demands that would create illegal hiring and employment conditions. I agree with the Respondents' assertions that they were desirous of securing contracts with the Companies, but the evidence plainly shows they insisted upon acceptance of their jurisdiction, foreman and general laws clauses, as written, as a condition precedent to the execution of any collective bargaining agreements. Having found these provisions to be illegal, I further find that by demanding the Companies agree to these clauses the Respondent Unions thereby engaged in conduct in violation of Section 8 (b) (3) of the Act.

The Violation of Section (8) (b) (2)

Section 8 (b) (2) provides; "It shall be an unfair labor practice for a labor organization or its agents to cause or attempt to cause an employer to discriminate against an employee in violation of subsection 8 (a) (3). . . ." The latter section makes it an unfair labor practice for an employer to discriminate against an employee in order to encourage or discourage membership in a labor organization.

The General Counsel contends that by striking, or threatening to strike, to secure contractual provisions which would require union membership as a condition of employment, the Respondents violated Section 8 (b) (2) of the Act. The Respondents contend that the facts do not sus-

tain a violation of either the "causing" or "attempt" provisions of Section 8 (b) (2) for in order to establish a violation thereof it must be shown their activities were directed toward the actual, immediate discrimination against employees as contemplated by Section 8 (a) (3). Further, they argue that insistence upon their lawful contract terms which, if accepted, might grant the power, or compel, the Companies to discriminate at some indefinite future time is insufficient to establish a violation of Section 8 (a) (3). In support of the latter argument counsel point out that the terms demanded herein have been in effect in other agreements in the area as well as in the last contract with *Worcester*, without any charges of discriminatory application or enforcement of the contracts. I have already found the jurisdiction, foreman and general laws clauses to be illegal, so I cannot accept the basic argument that the Respondents were simply insisting upon lawful contract terms, hence did not engage in any conduct proscribed by the Act. Nor does the fact that other publishers in New England, and *Worcester* in the past, have, or have had agreements embodying these clauses alter the situation for the Board has held that where an employer agrees to illegal hiring or employment terms he violates Section 8 (a) (3) of the Act. (*Amalgamated Meat Cutters etc.*) (The Great A & P Company), 81 NLRB 1052, 1054-1055, *New York State Employers Association, Inc.*, 93 NLRB 127-128; *Pacific American Shipowner's Association*, 98 NLRB 582, 584-585.) I believe it only necessary to point out that the legal arguments here advanced by the Respondents were also raised in the *ANPA* case and rejected by the Court of Appeals.

In the *ANPA* case and *N. L. R. B.* v. *National Maritime Union of America* (175 F. 2d 686 (C. A, 2)), the Courts squarely held that a strike, or threat to strike, to obtain contractual provisions which would require union member-

ship as a condition of employment constitutes a violation of Section 8 (b) (2).

On the basis of the record I have no difficulty in finding that the primary object or purpose of the strikes against *Worcester* and *Haverhill* was to force the Companies to accede to the Respondents' demands for the illegal jurisdiction, foreman and general laws clauses. By engaging in such conduct and activities the Respondents violated Section 8 (b) (2) of the Act.

THE VIOLATION OF SECTION 8 (B) (1) (B)

I find that by engaging in the conduct described above in respect to the foreman clause, the Respondents restrained and coerced *Worcester* and *Haverhill* in the selection of their representatives for the adjustment of grievances thereby violating Section 8 (b) (1) (B) of the Act.

THE ALLEGED VIOLATION OF SECTION 8 (B) (1) (A)

In the *ANPA* case the Board dismissed the Section 8 (b) (1) (A) allegations of the complaint because the proscriptions of that provision are limited to situations involving actual or threatened economic reprisals and violence by unions or their agents in an effort to compel them to join a union or cooperate in a union's strike activities. (86 NLRB 955-957, affirmed 193 F. 2d 782, 800-801.) The facts in these cases are not so distinguishable from those in the *ANPA* case (and cases cited therein) that they would justify a conclusion contrary to the Board's decision. Accordingly, I find the Respondents did not engage in any conduct in violation of Section 8 (b) (1) (A).

THE ITU AS A PARTY TO THE PROCEEDINGS

In substance the ITU claims it is not chargeable with any unfair labor practices arising out of the negotiations because the Locals were negotiating independently and that

it is not, and was not, the bargaining representative of the employees of *Worcester* and *Haverhill*, respectively. These arguments were advanced in the *ANPA* case (104 NLRB 806, 807-808) and the *Chicago Typographical Union* case (86 NLRB 1041, 1045-1048) and answered adversely to the ITU. Counsel for the ITU do not deny the similarity between those cases and the present cases. Here the evidence plainly shows that each of the Locals demanded an "approvable contract," that is one which would be approved by the ITU. In this respect the record also establishes that the Locals were required to obtain ITU approval of their agreements prior to submission to the Companies and, again, approval before final execution of any tentative agreement. It is, of course, undisputed that Lyon and LaMothe actively participated in the negotiations as representatives of the ITU and that the ITU sanctioned and approved the strikes. On this evidence I find that the ITU and its executive council are proper parties to these proceedings and are chargeable with the unfair labor practices alleged and found herein.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent Unions, set forth above, occurring in connection with the operations of *Worcester* and *Haverhill* have a close, intimate, and substantial relation to trade, traffic and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that the Respondents have engaged in unfair labor practices I will recommend that they, and each of them, cease and desist therefrom. From the facts in these cases it is reasonable to infer that, unless effectively

restrained, the Respondents will refuse to bargain collectively with the Companies as required by Section 8 (b) (3) by persisting upon acceptance of their contract demands for unlawful hiring and employment conditions and will continue to strike, or threaten strike action, to obtain these illegal objectives. I shall therefore recommend that the Respondents cease and desist not only from engaging in the specific conduct found to be unlawful but from engaging in any like or related acts for the same objective.

Upon the basis of the above findings of fact and the entire record, I make the following:

CONCLUSIONS OF LAW

1. *Worcester* and *Haverhill* are each engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. The ITU, Local 165 and Local 38, are each labor organizations within the meaning of Section 2 (5) of the Act.

3. Respondents Woodruff Randolph, Harold H. Clark, Joe Bailey, Don Hurd and Charles M. Lyon, and the scale committee of Local 165, are agents of the ITU and Local 165 within the meaning of Section 8 (b) of the Act.

4. All composing room employees, exclusive of foremen, of *Worcester*, including classifications such as hand compositors, typesetting machine operators, make-up men, bank men, ad men, proofreaders, machinists for typesetting machines, operators, and machinists on all mechanical devices which case or compose type or slugs constitute, and all times constituted, a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (c) of the Act.

5. All composing room employees, exclusive of foremen, of *Haverhill* constitute, and all times constituted, a unit for

purposes of collective bargaining within the meaning of Section 9 (c) of the Act.

6. Local 165 and Local 38 and the ITU were at all times material, and now are, the exclusive bargaining representatives of the employees of *Worcester* and *Haverhill*, respectively, in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

7. By refusing to bargain collectively with *Worcester* and *Haverhill*, Local 165 and Local 38 and the ITU have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (b) (3) of the Act.

8. By instigating, directing and engaging in strikes to cause or attempt to cause *Worcester* and *Haverhill* to discriminate against their employees in violation of Section 8 (a) (3) of the Act, the Respondents thereby violated Section 8 (b) (2) of the Act.

9. By instigating, directing and engaging in strikes to force *Worcester* and *Haverhill* to hire only foremen who are members of the ITU, the Respondents restrained and coerced the Companies in the selection of their representatives for the adjustment of grievances, and thereby engaged in unfair labor practices within the meaning of Section 8 (b) (1) (B) of the Act.

10. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

11. The Respondents have not engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record, I recommend:

1. The Respondents International Typographical Union,

AFL-CIO, and International Typographical Union Local 38, AFL-CIO, and their officers, agents, and representatives shall:

(a) Cease and desist from:

(1) Refusing to bargain collectively with Haverhill Gazette Company for all the employees in the unit found appropriate herein, specifically by insistence upon acceptance of the Respondent Unions' jurisdiction, foreman and general laws clauses, or by any other means, so long as the Respondent Unions are the representatives of the employees in the above described bargaining unit;

(2) Engaging in strike action, or directing, instigating, or encouraging employees to engage in or threaten to engage in strike action, or approving or ratifying strike action taken by the employees, for the purpose of forcing Haverhill Gazette Company to execute an agreement requiring membership in the International Typographical Union as a condition of employment in violation of Section 8 (a) (3) of the Act;

(3) In any other manner causing or attempting to cause Haverhill Gazette Company to discriminate against employees in violation of Section 8 (a) (3) of the Act;

(4) In any manner restraining or coercing Haverhill Gazette Company in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Upon request, bargain collectively as the exclusive bargaining representative of the employees in the unit found to be appropriate;

(2) Post at conspicuous places at the business office of the Respondent International Typographical Union

and the Respondent Local 38, and all other places where notices or communications to members of Respondent Local 38 are customarily posted, including the composing room of Haverhill Gazette Company, the Company being willing, a copy of the notice attached marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the First Region, shall, after being signed by a duly authorized officer of the Respondent International Typographical Union and an officer of Respondent Local 38, be posted immediately upon receipt thereof and remain so posted for a period of sixty (60) consecutive days. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(3) Notify the Regional Director for the First Region, in writing, within twenty (20) days after the date of receipt of this Intermediate Report what steps the Respondents have taken to comply therewith.

It is recommended that the complaint be dismissed insofar as it alleges that the Respondents coerced and restrained the employees in violation of Section 8 (b) (1) (A) of the Act.

It is further recommended that unless on or before twenty (20) days from the date of receipt of this Intermediate Report the Respondents notify the said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue its order requiring the Respondents, or either of them, to take the action aforesaid.

II. The Respondents International Typographical Union, AFL-CIO: its executive council, Woodruff Randolph, Harold H. Clark, Joe Bailey, Don Hurd and Charles M. Lyon, and International Typographical Union Local 165, AFL-

CIO, and its scale committee, and their officers, agents and representatives shall:

(a) Cease and desist from:

(1) Refusing to bargain collectively with Worcester Telegram Publishing Company, Inc., for all the employees in the unit found appropriate herein, specifically by insistence upon acceptance of the Respondent Unions' jurisdiction, foreman and general laws clauses, or by any other means, so long as the Respondent Unions are the representatives of the employees in the above-described bargaining unit;

(2) Engaging in strike action, or directing, instigating, or encouraging employees to engage in or threaten to engage in strike action, or approving or ratifying strike action taken by the employees, for the purpose of forcing Worcester Telegram Publishing Company, Inc., to execute an agreement requiring membership in the International Typographical Union as a condition of employment in violation of Section 8 (a) (3) of the Act;

(3) In any other manner causing or attempting to cause Worcester Telegram Publishing Company, Inc., to discriminate against employees in violation of Section 8 (a) (3) of the Act;

(4) In any manner restraining or coercing Worcester Telegram Publishing Company, Inc., in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Upon request, bargain collectively as the exclusive bargaining representative of the employees in the unit found to be appropriate.

(2) Post at conspicuous places at the business office of the Respondent International Typographical Union

and the Respondent Local 165, and all other places where notices or communications to members of Respondent Local 165 are customarily posted, including the composing room of Worcester Telegram Publishing Company, Inc., the Company being willing, a copy of the notice attached hereto marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the First Region, shall, after being signed by a duly authorized officer of the Respondent International Typographical Union and an officer of Respondent Local 165, and the individual Respondents, be posted immediately upon receipt thereof and remain so posted for a period of sixty (60) consecutive days. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(3) Notify the Regional Director for the First Region, in writing, within twenty (20) days after the date of receipt of this Intermediate Report what steps the respondents have taken to comply therewith.

It is recommended that the complaint be dismissed insofar as it alleges the Respondents have coerced and restrained the employees in violation of Section 8 (b) (1) (A) of the Act.

It is further recommended that unless on or before twenty (20) days from the date of receipt of this Intermediate Report the Respondents notify the said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue its order requiring the Respondents, or any of them, to take the action aforesaid.

Dated at Washington, D. C.:

s/ Reeves R. Hilton,
Trial Examiner.

APPENDIX A

NOTICE

TO ALL MEMBERS OF INTERNATIONAL TYPOGRAPHICAL UNION LOCAL 38, AFL-CIO, AND TO EMPLOYEES OF HAVERHILL GAZETTE COMPANY

PURSUANT TO

THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL, upon request, bargain collectively in good faith in our capacity as exclusive bargaining representative of all employees of HAVERHILL GAZETTE COMPANY in the bargaining unit described below with respect to rates of pay, wages, hours of employment and other conditions of employment including union-security as permitted in Section 8 (a) (3) of the Act.

The bargaining unit is:

All composing room employees, exclusive of foremen.

WE WILL NOT engage in strike action, or direct, instigate or encourage employees to engage in or threaten to engage in strike action, or approve or ratify strike action taken by the employees, for the purpose of forcing HAVERHILL GAZETTE COMPANY to execute an agreement requiring membership in the INTERNATIONAL TYPOGRAPHICAL UNION as a condition of employment in violation of Section 8 (a) (3) of the Act.

WE WILL NOT in any other manner cause or attempt to cause HAVERHILL GAZETTE COMPANY to discriminate against employees in violation of Section 8 (a) (3) of the Act.

WE WILL NOT in any manner restrain or coerce HAVERHILL GAZETTE COMPANY in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO

(Union)

Dated ..... By .....

(Officer) (Title)

INTERNATIONAL TYPOGRAPHICAL UNION LOCAL 38, AFL-CIO

(Union)

Dated ..... By .....

(Officer) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX A

NOTICE

TO ALL MEMBERS OF INTERNATIONAL TYPOGRAPHICAL UNION 165, AFL-CIO, AND TO EMPLOYEES OF WORCESTER TELEGRAM PUBLISHING COMPANY, INC.

PURSUANT TO

THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL, upon request bargain collectively in good faith in our capacity as exclusive bargaining representative of all employees of WORCESTER TELEGRAM PUBLISHING COMPANY, INC., in the bargaining unit described below with respect to rates of pay, wages, hours of employment and other conditions of employment including union-security as permitted by Section 8 (a) (3) of the Act.

The bargaining unit is:

All composing room employees, exclusive of foremen, including classifications such as hand compositors, type-setting machine operators, make-up men, bank men, ad men, proofreaders, machinists for typesetting machines, operators, and machinists on all mechanical devices which cast or compose type or slugs.

WE WILL NOT engage in strike action, or direct, instigate or encourage employees to engage in or threaten to engage in strike action, or approve or ratify strike action taken by the employees, for the purpose of forcing WORCESTER TELEGRAM PUBLISHING COMPANY, INC., to execute an agreement requiring membership in the INTERNATIONAL TYPOGRAPHICAL UNION as a condition of employment in violation of Section 8 (a) (3) of the Act.

WE WILL NOT in any other manner cause or attempt to cause WORCESTER TELEGRAM PUBLISHING COMPANY, INC., to discriminate against employees in violation of Section 8 (a) (3) of the Act.

WE WILL NOT in any manner restrain or coerce WORCESTER TELEGRAM PUBLISHING COMPANY, INC., in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

INTERNATIONAL TYPOGRAPHICAL UNION AFL-CIO

(Union)

Dated ..... By .....
(Officer) (Title)

Woodruff Randolph Harold H. Clark

Joe Bailey Don Hurd

Charles M. Lyon

INTERNATIONAL TYPOGRAPHICAL UNION LOCAL 165, AFL-CIO, AND ITS SCALE COMMITTEE

(Union)

Dated ..... By .....
(Officer) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

RESPONDENTS' EXCEPTIONS TO INTERMEDIATE REPORT

Case No. 1-CB-429
Case No. 1-CB-430

Now come respondents in the above-entitled matter and present their exceptions to the Intermediate Report of Trial Examiner Reeves R. Hilton. For the Board's convenience, the exceptions have been arranged by subject matter: first to the findings of fact and failures to find in the individual cases, then to the legal findings, conclusions, etc. Wherever a failure to find is excepted to, reference is made to the point in the record where this fact appears. (The key to record references is as follows: (R.) refers to the hearing before the Trial Examiner in the Worcester case; (W.R.) to the Worcester 10(k) hearing; (H.R.) to the trial of the *Haverhill* case before Judge Aldrich; (N.Y.R.) to the hearing in the *New York Mailers'* case.

I. *FACTS*

A. *Worcester Case*

1. To the failure to find that Local 165 objected to employer's unilateral increase as breaking off negotiations (R. 231-2) and failure to find that union urged continuance of negotiations after employers insisted that acceptance of these payments indicated acceptance of employers' terms. (R. 235-6).

2. To the finding (p. 5, l. 59) that the negotiations "centered principally" on the Local 165 demand concerning jurisdiction, incorporation of the ITU general laws and the foreman's clause; and the failure to find rather, that all of the Local 165 contract proposals were involved in the negotiations, and that Local 165's representatives wanted to discuss the contract point by point (R. 240), but the employers' representatives insisted on discussing only the jurisdiction and laws clauses. (R. 239-40)

3. To the ambiguous finding (p. 6, l. 20-23) regarding the language of the proposed laws clause and the failure to find that it read as follows: "The General Laws of the International Typographical Union, in effect at the time of execution of this agreement, not in conflict with state or federal law, shall govern relations between the parties on those subjects concerning which no provision is made in this contract."

4. To the failure to find that at the October 14, 1956 meeting, Phillips stated on behalf of management that the union proposal would increase costs by some half million dollars, (R. 239) and the further failure to find that the company counterproposal commented on the increased cost of the union proposal. (G.C.Ex. #3, dated October 31, 1956)

5. To the failure to find that the company counterproposal included the introduction of a new class of employees between journeyman and apprentice, changes in the priority (seniority) system and increasing the grounds for discipline and the unilateral power of the employer over discipline.

6. To the failure to find that neither in the company counterproposal nor at any other time did the company state which general laws it wished to negotiate; and to the failure to find further that the union on November 1 stated it would be glad to put the laws individually into the contract or do anything else which would give the employees the proper protection. (R. 243)

7. To the failure to find that the members of the local passed a resolution protesting the company's procrastinating attitude in the negotiations. (R. 243)

8. To the failure to find that Phillips stated that the management wanted an increase in the standard daily production of news matter; to the further failure to find that the union representatives responded by expressing a desire for cleaner copy. (R. 247)

9. To the failure to find that it had previously been the practice of the parties to discuss issues like jurisdiction first in negotiations, but to pass over them if unresolved and to move to other issues. (R. 239, 317-18)

10. To the failure to find that Local President Quinn asked that ITU President Randolph send assistance *and* to see if an outside observer could find a way to remove the obstacles to negotiations. (R. 252-53, 385)

11. To the failure to find that at the February 8 meeting Phillips raised the issue of the ratio between journeymen and apprentices, and to the failure further to find that at that meeting the union stated that if it could not supply a competent machinist, it would permit the company to put on a man outside priority. (R. 287-88)

12. To the failure to find that the foreman refused to discuss grievances with the union representative (chapel chairman) as had been the practice, on the ground that there was no contract. (R. 441-2)

13. To the failure to find that after Hanson appeared in the negotiations the employers objected to the legality of union contract proposals other than the jurisdiction, laws and foreman clauses, to wit: The requirement that employees be journeymen or apprentices (R. 110-11); Permitting permanent situation holders to employ competent substitutes. (R. 123)

14. To the finding (p. 13, l. 45) that Mahoney stated that any settlement of the dispute would have to be approved by the ITU.

15. To the failure to find that on February 21, 1958 the state conciliation service invited both parties to a conference, that the union scale committee travelled to Boston for the purpose, and that the company sent a telegram saying it was too busy preparing for an NLRB hearing to appear.

16. To the failure to find that at the time of the strike the company objected to many of the contract proposals of the union to which there was no objection on the ground of

illegality, or to which the company representative did not recall why the company had objected; to the further failure to find that these included the following: Art. I, §§5, 6, 9, 12; Art. III, §7; Art. IV, §§4, 5, 10, 11, and also what were termed by the parties "economic issues" such as wages, hours etc. (R. 50, 112-13, 114, 117, 121-22, 124, 130, 131)

B. *Haverhill Case.*

17. To the failure to find explicitly that in the first stage of the negotiations the company rejected the following union demands: wages, Blue Cross severance pay, pension plans, overtime, sick leave, vacations, holidays and slide days. (H.R. Mar. 5, 26-29, 67-8)

18. To the ambiguous and misleading finding (p. 14, l. 41) that Heath said that there was never any mention of nonunion men performing any of the new processes and the failure to find rather that there was no discussion of employee membership or nonmembership in the union throughout the negotiations (H.R. Mar. 5, 79)

19. To the finding (p. 15, l. 29) that Heath expressed the opinion at the luncheon conference of employer representatives on November 20, that the general laws were illegal (a finding contrary to Phillips' testimony, H.R. Mar. 6, 77) and to the failure to find rather, that the only objections stated to the laws at this conference were that they involved jurisdiction and that the laws had been changed to prevent an employer from giving a physical examination to a member of the ITU. (H.R. Mar. 6, 78, 86)

20. To the failure to find that no one ordered the employees to strike. (H.R. Mar. 18, 246)

21. To the failure to find that Lyon entered the negotiations on ITU President Randolph's direction to mediate the differences if possible. (H.R. Mar. 18, 235)

22. To the failure to find that Lyon stated that as long as the foreman was carrying out the orders of management

he could not be disciplined by the union. (H.R. Mar. 6, 20-22, 61-62)

23. To the failure to find that the discussion on November 21 of the struck work clause and the right of employees to obtain substitutes (p. 16, l. 34) was due to Parry's objection (for the first time) to these clauses.

24. To the failure to find explicitly that at the time of the strike there was disagreement on the following clauses, all of which were included in many contracts, including New England (H.R. Mar. 6, p. 46):

Article 1 - 4 - Journeymen and Apprentices
5 - Jurisdiction
6 - Foremen
7 - Journeymen Defined
8 - Observance of Union Laws
9 - Struck work
10 - Arbitration (last paragraph)
Article 2 - 1 - Overtime
4 - Call Back
10 - Sick Leave
11 - Substitutes
Article 3 - 6 - Shifting Jobs
Article 4 - 1 - Hours
4 - Rates of Pay
8 - Blue Cross - Blue Shield
9 - Picket Lines
10 - Severance Pay
11 - Pension Pay
Article 5 - 1 - Taft-Hartley Law
2 - Change in Laws
3 - ITU Not a Party to Contract

C. *Facts Common to Both Cases*

25. To the failure to find that the proposed contract provisions attacked in both complaints do *not* read "in sub-

stance" as stated therein, and the further failure to find the exact language of each and all of those provisions as stated in G. C. Ex. #2; H.G.C. Ex. #1.

26. To the failure to find that the ITU General Laws attacked in both complaints do *not* read "in substance" as stated therein, and the further failure to find the exact language of each and all of those Laws as stated in G.C. Ex. #15; H.G.C. Ex. #3.

27. To the failure to find the history of the following proposed contract clauses, as testified by President Randolph "journeyman" (N.Y.R. 498-99); foreman (N.Y.R. 510-11, 611-12); Art. II and Art. II §11 (N.Y.R. 488-91); "laws" (N.Y.R. pp. 512-7.)

28. To the failure to find that the ITU officers answer many inquiries regarding the legality of application of ITU laws in particular situations, and to the failure to find further that ITU officials carefully instruct subordinate locals that they are forbidden to discriminate between members and non-members. (Resp. Ex. 4(a)-(ss)).

29. To the failure to find that it was made clear in the proposed contracts, and was never questioned by any of the parties that Locals 38 and 165 were the representatives of the composing room employees in Haverhill and Worcester respectively, and that the ITU made no claim to be their representative.

30. To the failure to find that under the ITU General Laws and By-Laws that the ITU has no authority to enter into contractual agreements, and that this power is exclusively with the locals. (G.C. Ex. 15, p. 85, Art III, §1)

31. To the failure to find that the International is permitted to enter local situations only when a strike may develop (N.Y.R., p. 471), and that the International President is required to attempt to resolve the dispute personally or through a representative (G.C. Ex. 15, p. 64, Art.

XIX §1); and to the failure to find that this procedure was followed by the Union in both these cases.

32. To the failure to find that a strike can be called only by the vote of the members of the Local. (H.R. Mar. 18, pp. 228-29)

33. To the failure to make explicit the conclusionary finding that the unions in both cases bargained in actual good faith, and believed their contract proposals to be entirely legal.

34. To the failure to make the conclusionary finding that in each of these cases company representatives obstructed negotiations by interjecting new issues, that they used their objections to the legality of the union proposals as a bargaining tactic, that they had no genuine interest in working out an agreement but rather negotiated with a purpose to lay a predicate for unfair labor practice or contempt charges against the locals or ITU.

35. To the failure to find that "approval" of contracts which was discussed in the negotiations meant the statement at the foot of each contract signed by the ITU President (G.C. Ex. #2); that locals signing contracts without this "approval" are not disciplined (R. 412) and that the purpose of the ITU's examining contracts is to comply with ITU Laws, federal law and an order of the Seventh Circuit Court of Appeals.

36. To the failure to find that foremen who are members of the ITU are relieved of any obligations as members which would be inconsistent with their obligations to their employers or under federal law. (N.Y.R. 585-6); and to the failure to find further that the obligations of ITU membership do not include giving employment reference to members. (N.Y.R. 507)

37. To the failure to find that contracts containing the clauses attacked in the complaint were in effect all over the

country and that attorneys and publishers have agreed that they were lawful. (N.Y.R. 485)

38. To the finding (p. 21, l. 33) that the phrase "union shop" as used by Randolph in his testimony is not the union shop permitted under the Act; and to the failure to find rather that Randolph's testimony makes quite clear that the term means a shop in which the employer contracts with a local of the ITU, and the failure to find further that non-union men are employed in some of these "union shops". (N.Y.R. 560)

39. To the failure to consider Duffy's testimony, (N.Y.R. 1071-1081) which was incorporated into the present record at R. 429.

40. To the failure to find from Duffy's testimony that the contractual provisions here in issue can be and are being applied in a nondiscriminatory manner.

II. *CONCLUSIONS AND LEGAL FINDINGS*

41. To the failure to recommend that the complaints be dismissed in both cases because they set forth inaccurately the sections of the proposed contracts and of the General Laws whose illegality is charged.

42. To the failure to recommend that paragraph VIII of the Haverhill complaint and paragraph IX of the Worcester complaint be dismissed because they charge respondents with violations of two separable parts of §8(b)(2), thus denying respondents an adequate opportunity to defend, contrary to the Fifth Amendment to the U. S. Constitution, the LMRA and Administrative Procedure Act, and the Board's own rules.

43. To the conclusion (p. 25, l. 26 *et seq.*) that the respondent international is chargeable with the unfair labor practices arising out of these negotiations.

44. To the conclusion (p. 18, l. 19-20) that the respondents' demand for a jurisdictional clause was the primary cause of the dispute and the failure to conclude that each strike was over failure to agree on a whole contract.

45. To the failure to find that the unions sought to bargain only on behalf of the composing room employees.

46. To the conclusion (p. 18, l. 19) that the union's proposal for a juris dictional clause was a "demand"; and to the failure to conclude rather that respondents did not insist on the jurisdictional proposal in the language submitted.

47. To the failure to find that the processes included in the jurisdictional clause were substitutes for processes traditionally performed by composing room employees.

48. To the conclusion (p. 20, l. 7-10) that by defining the work tasks coming within the scope of the composing room unit, the unions were seeking to bargain for a unit other than all composing room employees.

49. To the conclusion (p. 19, l. 34 - p. 20, l. 5) that the present cases come within the rule of the *Eastern Mass.* (110 NLRB 963) or the Texlite (119 NLRB #232) cases.

50. To the conclusion that the unit for which the union sought to bargain was inappropriate, and the further conclusion that the unions insisted on bargaining for an inappropriate unit. (p. 19, l. 30)

51. To the failure to find that *Worcester's* offer to include in the agreement a pledge not to introduce the various processes set forth in the jurisdictional clause constituted a recognition of the appropriateness of the unit sought by the unions.

52. To the conclusion (p. 19, l. 31) that in the absence of certification or other prior Board decision defining the appropriateness of a unit, a union may not propose, bargain and strike for a unit of its own choice.

53. To the failure to find that in neither case did the union request that the company assign any presently existing work to employees in its unit rather than to any other employees.

54. To the conclusions (p. 20, l. 10-33) relative to the Board's "Decision and Determination of Dispute" in the Worcester 10(k) proceeding. (121 NLRB #101)

55. To the failure to conclude that in the absence of a certification or other Board decision defining the appropriateness of a unit, a union may propose, bargain or strike for a contract provision relative to work not presently in existence.

56. To the conclusion that the unions "insisted" on acceptance of the union foreman clause in either of these disputes.

57. To the failure to conclude that no unfair labor practice can now be found in the *Worcester* case with respect to the foreman clause because of the letters of January 16 and 24 (p. 13, l. 31-38)

58. To the failure to conclude that a company and a union may lawfully enter into an agreement requiring that foremen be members of a union.

59. To the conclusion (p. 20, l. 43 - p. 21, l. 5) that the incidents in the *Worcester* case involving the foreman "do not affect the issues herein", under the Board's theory in *Enterprise Industrial Piping.*

60. To the conclusion (p. 21, l. 6-10) that the unions demanded that the General Laws be accepted *in toto*, and the failure to conclude rather that the unions were willing to take any contract which would give them the protection of the General Laws, to the extent consistent with the law.

61. To the conclusion (p. 21, l. 50-52) that the term "journeymen" as provided in the proposed contracts refers only to journeymen who are members of the union.

62. To the failure to find that the definition of "journey-

men" as set forth in the contract supersedes any provisions to the contrary in the general laws.

63. To the conclusion (p. 21, l. 52-55) that the unions' contractual proposal requiring the companies to employ "journeymen" constituted a demand for a closed shop provision.

64. To the failure to find that under the unions' contractual proposals the terms of the contract would supersede any inconsistent provision of the general laws.

65. To the conclusions (p. 21. l. 59 - p. 22, l. 1) that the union has a strategy to maintain closed-shop operations in the composing room and that the general laws requiring the foreman to be a member of the union are part of such "strategy."

66. To the conclusion (p. 22, l. 1-4) that "the General Laws insofar as they supplement the jurisdictional and foreman clause, specifically Article III, Section 12; Article V, Section 11; Article VII, Section 1, 5 and 6, and Article VIII are illegal."

67. To the conclusion (p. 22, l. 61-63) that the contract clauses and general laws delegate exclusive control to the respondent unions in the establishment and maintenance of the priority system.

68. To the conclusion (p. 24, l. 11-14) that the unions insisted on the acceptance of their jurisdiction, foreman and general laws clauses, as condition precedent to execution of any agreement, and to the further conclusion (p. 22, l. 14), that these provisions are illegal.

69. To the finding (p. 24, l. 61 - p. 25, l. 1) that the primary object or purpose of the strikes was to force the companies to accede to respondents' demand for illegal jurisdiction, foreman and general laws clauses.

70. To the conclusions that respondents violated §8(b)(1)(B), 8(b)(2) and 8(b)(3) of the Act.

71. To the conclusions of Law numbered 3, 4, 5, 6, 7, 8, 9 and 10.

72. To all of the Recommendations, p. 26, l. 62 - p. 29, l. 5.

73. Renew herein all automatic exceptions to ruling of the Trial Examiner during the hearing.

Respectfully submitted,

VAN ARKEL AND KAISER by
(s) GERHARD VAN ARKEL
(s) GEORGE KAUFMANN
SEGAL AND FLAMM by
(s) ROBERT M. SEGAL
Counsel for Respondents

Dated: January 23, 1959

DECISION AND ORDER

Case No. 1-CB-429
Case No. 1-CB-430

On December 17, 1958, Trial Examiner Reeves R. Hilton issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. He also found that the Respondents had not engaged in certain other alleged unfair labor practices and recommended dismissal of the complaint with respect to such allegations. Thereafter, the Respondents, the General Counsel, and Worcester filed exceptions to the Intermediate Report and supporting briefs.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Ex-

aminer made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case,[1] and hereby adopts the findings, conclusions and recommendations of the Trial Examiner.[2]

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

I. The Respondents International Typographical Union, AFL-CIO, and International Typographical Union Local 38, AFL-CIO, and their officers, agents, and representatives shall:

(a) Cease and desist from:

(1) Refusing to bargain collectively with Haverhill Gazette Company for all the employees in the unit

[1] The Respondents' request for oral argument is hereby denied as the record, exceptions and briefs adequately present the issues and positions of the parties.

123 NLRB No. 97

[2] In view of the fact, as found by the Trial Examiner, that the Companies had no substantial objections to the Respondents' contract proposals or general laws covering the apprenticeship and priority systems, and therefore the Respondents' demands in this connection did not prevent the parties from reaching agreement on a new contract, we agree with the Trial Examiner's finding that in this respect the Respondents did not refuse to bargain in violation of Section 8 (b) (3). We wish to make clear, however, that by demanding the apprenticeship and priority systems established in the general laws, which systems delegate exclusive control to the Respondents in the establishment and maintenance of these systems, the Respondents did "attempt to cause" discrimination in violation of Section 8 (b) (2). See *International Brotherhood of Teamsters, etc., (Pacific Intermountain Express Company)*, 107 NLRB 837.

We agree with the Trial Examiner's finding that by striking to force the Companies to accede to the Respondents' demands for the illegal foreman and general laws clauses, the Respondents violated Section 8 (b) (2); but we find it unnecessary to pass upon his finding that the Respondents violated Section 8 (b) (2) by so striking also for the jurisdiction clause.

found appropriate herein, specifically by insistence upon acceptance of the Respondent Unions' jurisdiction, foreman and general laws clauses, or by any other means, so long as the Respondent Unions are the representatives of the employees in the above described bargaining unit;

(2) Engaging in strike action, or directing, instigating, or encouraging employees to engage in or threaten to engage in strike action, or approving or ratifying strike action taken by the employees, for the purpose of forcing Haverhill Gazette Company to execute an agreement requiring membership in the International Typographical Union as a condition of employment in violation of Section 8 (a) (3) of the Act;

(3) In any other manner causing or attempting to cause Haverhill Gazette Company to discriminate against employees in violation of Section 8 (a) (3) of the Act;

(4) In any manner restraining or coercing Haverhill Gazette Company in the selection of its representatives for the purpose of collective bargaining or the adjustment of grievances.

(b) Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Upon request, bargain collectively as the exclusive bargaining representative of the employees in the unit found to be appropriate;

(2) Post at conspicuous places at the business office of the Respondent International Typographical Union and the Respondent Local 38, and all other places where notices or communications to members of Respondent Local 38 are customarily posted, including the composing room of Haverhill Gazette Company, the Company being willing, a copy of the notice attached to the

Intermediate Report marked Appendix A.[3] Copies of said notice, to be furnished by the Regional Director for the First Region, shall, after being signed by a duly authorized officer of the Respondent International Typographical Union and an officer of Respondent Local 38, be posted immediately upon receipt thereof and remain so posted for a period of sixty (60) consecutive days. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(3) Notify the Regional Director for the First Region, in writing, within ten (10) days from the date of this Order what steps the Respondents have taken to comply therewith.

II. The Respondents International Typographical Union, AFL-CIO, its executive council, Woodruff Randolph, Harold H. Clark, Joe Bailey, Don Hurd and Charles M. Lyon, and International Typographical Union Local 165, AFL-CIO, and its scale committee, and their officers, agents and representatives shall:

(a) Cease and desist from:

(1) Refusing to bargain collectively with Worcester Telegram Publishing Company, Inc., for all the employees in the unit found appropriate herein, specifically by insistence upon acceptance of the Respondent Unions' jurisdiction, foreman and general laws clauses, or by any other means, so long as the Respondent Unions are the representatives of the employees in the above-described bargaining unit;

[3] This notice shall be amended by substituting for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" the words "A DECISION AND ORDER." In the event this Order is enforced by a decree of a United States Court of Appeals, the notice shall be further amended by substituting for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

(2) Engaging in strike action, or directing, instigating, or encouraging employees to engage in or threaten to engage in strike action, for the purpose of forcing Worcester Telegram Publishing Company, Inc., to execute an agreement requiring membership in the International Typographical Union as a condition of employment in violation of Section 8 (a) (3) of the Act;

(3) In any other manner causing or attempting to cause Worcester Telegram Publishing Company, Inc., to discriminate against employees in violation of Section 8 (a) (3) of the Act;

(4) In any manner restraining or coercing Worcester Telegram Publishing Company, Inc., in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

(b) Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Upon request, bargain collectively as the exclusive bargaining representative of the employees in the unit found to be appropriate.

(2) Post at conspicuous places at the business office of the Respondent International Typographical Union and the Respondent Local 165, and all other places where notices or communications to members of Respondent Local 165 are customarily posted, including the composing room of Worcester Telegram Publishing Company, Inc., the Company being willing, a copy of the second notice attached to the Intermediate Report marked Appendix A.[4] Copies of said notice,

[4]This notice shall be amended by substituting for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" the words "A DECISION AND ORDER." In the event this Order is enforced by a decree of a United States Court of Appeals, the notice shall be further

to be furnished by the Regional Director for the First Region, shall, after being signed by a duly authorized officer of the Respondent International Typographical Union and an officer of Respondent Local 165, and the individual Respondents, be posted immediately upon receipt thereof and remain so posted for a period of sixty (60) consecutive days. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(3) Notify the Regional Director for the First Region, in writing, within ten (10) days from the date of this Order what steps the Respondents have taken to comply therewith.

Dated, Washington, D. C., April 17, 1959

PHILIP RAY RODGERS,
Member

JOSEPH ALTON JENKINS,
Member

JOHN H. FANNING,
Member

National Labor Relations Board

(SEAL)

DECISION AND DETERMINATION OF DISPUTE

Case No. 1-CD-49

This proceeding arises under Section 10 (k) of the Act which provides that "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph 4 (D) of Section 8 (b), the Board

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amended by substituting for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen . . ."

On December 2, 1957, Worcester Telegram Publishing Company, Inc., herein called Worcester Telegram or Employer, filed with the Regional Director for the First Region a charge against International Typographical Union, AFL-CIO, and Members of its Executive Council, and against International Typographical Union, AFL-CIO, Local 165, and the latter's Scale Committee, herein jointly called Respondents, alleging that the Respondents had engaged in and were engaging in certain activities proscribed by Section 8 (b) (4) (D) of the amended Act. It was charged, in substance, that the Respondents had induced and encouraged the employees of the Worcester Telegram to engage in a strike or concerted refusal in the course of their employment to handle or work on goods with an object of forcing or requiring the Worcester Telegram to assign particular work to employees who are members of Respondent Unions rather than to employees in another trade, craft, or class.

Thereafter, pursuant to Section 10 (k) of the Act and Sections 102.79 and 102.80 of the Board's Rules and Regulations, the Regional Director investigated the charge and provided for an appropriate hearing upon due notice to all parties. The hearing was held before I. L. Broadwin, hearing officer, on February 24 and 25, March 25, April 9, and May 16, 1958. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The rulings of the hearing officer made at the hearing are free from prejudicial error and are hereby affirmed. The Respondents and the Worcester Telegram filed briefs with the Board.

Pursuant to the provisions of Section 3 (b) of the Act,

the Board has delegated its powers in connection with this case to a three-member panel.

The Respondents have requested oral argument. The request is hereby denied because the record and the briefs adequately present the issues and the positions of the parties.

Upon the entire record in the case, the Board finds:

1. The Worcester Telegram is engaged in the publication, sale and distribution of newspapers in the Worcester, Massachusetts, area. During the past year, the Worcester Telegram, in the course and conduct of its publishing operations, held membership in, and subscribed to, various interstate news services, including United Press Association and Associated Press, advertised nationally sold products, and had gross revenue from its operations in excess of $500,000. We find that the Worcester Telegram is engaged in commerce within the meaning of the Act.

2. International Typographical Union, AFL-CIO, and International Typographical Union, AFL-CIO, Local 165, are labor organizations within the meaning of the Act.

3. The alleged dispute.

A. *The Facts*

The Respondent Unions have represented Worcester Telegram employees in collective bargaining for many years. The Unions' last written contract with Worcester Telegram covered composing room employees and expired December 31, 1954. Thereafter, about June or July, 1956, the contracting parties instituted a series of bargaining meetings for the purpose of reaching a new written bargaining agreement. Several months after the start of those meetings Respondent Local 165 submitted a written contract proposal containing a clause setting forth the Local's proposed work jurisdiction. The first portion of the proposed clause was basically the same as a work jurisdiction

clause which was included in the expired December 1954 agreement; the latter portion of the proposal contained work jurisdiction coverage not previously set forth in the Respondents' contracts with the Worcester Telegram. The pertinent new portions of the work jurisdiction proposal were, as follows:

> Jurisdiction of the Union . . . includes classifications such as: . . . operators and machinists on all mechanical devices, which cast or compose . . . film; operators of tape perforating machines and recutter units for use in composing or producing type; operators of all phototypesetting machines (such as Fotosetter, Photon, . . .); employees engaged in proofing, waxing and paste-makeup with reproduction proofs, processing the product of phototypesetting machines, including development and waxing; paste-makeup of all type, hand-lettered, illustrative, border and decorative material constituting a part of the copy; ruling, photoproofing; correction, alteration, and imposition of the paste-makeup serving as the completed copy for the camera used in the plate-making process. Paste-makeup for the camera as used in this paragraph includes all photostats and prints used in offset or letterpress work and includes all photostats and positive proofs of illustrations (such as Velox) where positive proofs can be supplied without sacrifice of quality or duplication of efforts. The Employer shall make no other contract covering work as described above, especially no contract using the word 'stripping' to cover any of the work above mentioned.

With respect to the new portion of the proposed jurisdiction clause, it appears that the Employer's artists, who work in its art and advertising departments and are not represented by the Respondents, have for about 15 years been performing operations which the Employer's officials refer to as paste-makeup (or paste-up), stripping and

ruling. Paste-makeup, as performed in the Employer's operation, is "An assembly of art work, illustrations, border work, ruling, type matter, reproduction proofs of type matter, to assemble this all on a page or partial page to go to the camera to be photographed by photo-engravers;" stripping is the removal of incorrect type and insertion, by pasting, of correct type on a paste-makeup page; and ruling is the underlining or line bordering, vertically or horizontally, on a paste-makeup page. None of the remaining types of operations set forth in the new portion of the proposed work jurisdiction clause was being performed by employees of the Employer at the time the proposal was made.

About May 1957, the president of Respondent Local 165 and Employer officials began to discuss having composing room employees perform some of the paste-makeup operations which the artists were then doing. The Respondents claimed the paste-makeup work for the composing room employees on the theory that it was an operation which was a substitute for composing room processes. Pursuant to these discussions, it appears that the Employer orally and informally "agreed" to give to the Respondents' members the paste-makeup work involving reproduction proofs of type which had previously been composed in the composing room. Such work was to be started by the Respondents' members after they became qualified to do it, and after necessary building alterations involving the composing room were completed. The Employer did not agree to give to the Respondents' compositors paste-makeup work involving any lettering or illustrations other than the compositors' own reproduction proofs.

About July 1957, the Respondent Local sent one of its members, then working in the Employer's composing room, to a school operated by the Respondent International for

training in paste-makeup work. When this employee returned to Worcester, the Respondents organized a school; and the employee trained about 80 other members of the Respondent Local in paste-makeup work.

Meanwhile, the parties continued their negotiations for a new written contract. Meetings were held on November 26 and 27, 1957. At those meetings the Respondents' officials, among other things, demanded Employer acceptance of the Respondents' work jurisdiction proposal pertaining to paste-makeup because the Respondents "were fighting for job security and this was a parallel or substitute process for their conventional way of doing this type of work and, therefore, they are entitled to have it made available to their membership." The Employer rejected the demand because "the people presently employed in that type of work would have to have that work taken away from them in order to satisfy this Union demand or that it would be necessary for them to join the Union in order to qualify for the work."

At the November 27, 1957, meeting an Employer representative stated that, "the stumbling block to a final contract . . . were three items principally: (1) the Union foremen clause, (2) the insistence upon acceptance of the general laws of the I.T.U., and (3) the so-called jurisdiction clause." And a representative of the Respondents replied, "In our opinion these clauses are legal . . . We will not withdraw these demands."

The Respondents' members went out on strike on November 29, 1957. They were picketing the Employer's plant at the time of the hearing in this proceeding.

Since the commencement of the strike some of the Employer's non-striking employees have started to use tape perforating machines, another of the operations included in the Respondents' proposed work jurisdiction clause.

B. *The Contentions of the Parties*

The Worcester Telegram contends that, by the above-described conduct, the Respondents violated Section 8 (b) (4) (D) of the Act. The Respondents advance a number of contentions in support of the assertion that their strike was not proscribed by the provisions of Section 8 (b) (4) (D). Their basic assertion appears to be that their strike was "to achieve a satisfactory agreement;" and that, to the extent the strike was in support of the proposed work jurisdiction clause, it was merely a demand that the Respondents' members continue to "perform certain work by whatever means performed." Sequentially, they argue that such a demand did not require the Employer to reassign work from nonmembers of the Respondents to their members.

C. *Applicability of the Statute*

In a proceeding under Section 10 (k) of the Act the Board is required to find that there is reasonable cause to believe that Section 8 (b) (4) (D) has been violated before proceeding with a determination of the dispute out of which the alleged unfair labor practice has arisen.

As stated above, the essence of the Respondents' position is that the purpose of their strike was "to achieve a satisfactory agreement." They assert that they were striking to obtain Employer concessions on about 15 economic issues which derived from their written contract proposal. The Respondents also claim that the strike was partially in protest against the Employer's failure properly to apply job priority for employees as well as its refusal to comply with the Respondents' requests for negotiation meetings. On the other hand, the president of the Respondent Local testified that the work jurisdiction clause was one of the issues on which the "Company and the Union were apart." Indeed, the Respondents admit in their brief that, "at the

time of the strike," they were "in disagreement" with the Employer concerning the work jurisdiction clause of the proposed contract. Accordingly, at least a portion of the Respondents' purpose in striking was to resolve the "disagreement" over the work jurisdiction clause by forcing or requiring the Employer to accept that clause. It follows, therefore, that if the Respondents' work jurisdiction proposal required the assignment of work to its members rather than to "employees in another labor organization or in another trade, craft, or class," the Respondents' strike was for *an* unlawful object within the meaning of Section 8 (b) (4) (D).

As noted above, the Respondents contend that the proposed work jurisdiction clause was merely a demand that the Respondents' members *continue* to "perform certain work by whatever means performed." Implicit in this contention is the claim that their members were, in fact, performing all the work operations described in the proposal. The record does not support the Respondents' claim. The record shows with respect to the paste-makeup operations included in the Respondents' proposal, that artists in the Employer's art and advertising departments have, for about 15 years, been performing paste-makeup work.[1]

[1] The Respondents assert that the Employer was confused about, and misinterpreted the scope of, the term "paste-makeup" used in the Respondents' work jurisdiction proposal. The basis for this assertion apparently, is the Employer's occasional use of the term "paste-up," which the Employer used, for example, in the charge filed herein. However, the record establishes that the only confusion or misinterpretation involved was the appropriate term to be used to describe particular work functions. Both the Respondents' representatives and the Employer's established by their record testimony that the specific work, which the 2 slightly varying terms were intended to describe, was one and the same. Accordingly, we reject the Respondents' assertion.

Those artists were not members of, or represented by, the Respondents.[2]

The record thus establishes that the Respondents struck with an object of forcing or requiring the Employer to assign to the Respondents' members working in the composing room the paste-makeup work which the Employer had assigned to artists who were not members of the Respondents and who had been performing the paste-makeup operations. Apparently anticipating that the record establishes these facts, the Respondents argue, in the alternative, that the amount of work in dispute was *de minimis* for the purposes of 8 (b) (4) (D). Related to this argument is the Respondents' assertion that they did not seek the discharge of any employees. Whether a union's conduct, which is intended to force the reassignment of work within the meaning of Section 8 (b) (4) (D), will require the actual discharge of those employees who are deprived of the disputed work is completely irrelevant to the resolution of an 8 (b) (4) (D) issue. In other words, a finding that the Employer would or would not have discharged its artists, if it had acceded to the Respondents' unlawful pressure herein, is not determinative of the question whether there is reasonable cause for finding that the Respondents violated 8 (b) (4) (D). Moreover, the Board, in its judgment, rejects the Respondents' *de minimis* argument.

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[2] The Respondents contend that the paste-makeup work which the artists had been performing for 15 years was experimental. They also contend that the proposed work jurisdiction clause referred to permanent paste-makeup. Upon these contentions the Respondents request the Board to find that they made no present demand for the reassignment of work to their members. The record rebuts these contentions. The Employers' officials testified that the paste-makeup work was done by the artists on a permanent basis. Moreover, the performance of such work on an experimental basis for the extended period of 15 years is inherently unlikely. Accordingly, we find that the Respondents' demand for the Employer's paste-makeup work contained in the work jurisdiction proposal and the strike in support thereof constituted a present demand for work.

On the basis of the foregoing, and the entire record, we find that there is reasonable cause to believe that the Respondents induced or encouraged the Worcester Telegram's employees to engage in a strike with an object of forcing or requiring the Worcester Telegram to assign paste-make-up work to members of the Respondents rather than to other employees of the Worcester Telegram,—the artists —who were not members of the Respondents, thereby violating Section 8 (b) (4) (D) of that.[3] We find, accordingly, that the dispute involved in this proceeding is properly before the Board for determination under Section 10 (k) of the Act.

D. *Merits of the Dispute*

When the Respondents struck to require that their members be assigned the Employer's paste-makeup work, the Employer's artists, who were not members of the Respondent, were performing the work. The dispute, therefore, was one over the assignment of work by an employer to certain of its employees who were not members of the Respondents rather than to members of the Respondents. An employer is free to make such a work assignment free of strike pressure by a labor organization unless the employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing the work involved.[4] There is no evidence, in this case, that the assignment of work by the

[3] It is therefore unnecessary to decide herein whether there is reasonable cause to believe that another object of the Respondents' strike,— that is, the assignment of the Respondents' members of tape perforating machine operations, or of any other work, not being performed by any of the Employer's employees at the time the strike started on November 29, 1957—also violated Section 8 (b) (4) (D) of the Act.

[4] *International Longshoremen's and Warehousemen's Union, Local No. 16, CIO (Juneau Spruce Corporation)*, 82 NLRB 650.

Worcester Telegram was in contravention of any Board order or certification.

The Respondents contend, however, that, by the oral "agreement" they reached with the Employer in May 1957, the Employer, after lawful collective bargaining, assigned the disputed paste-n keup work to the Respondents' members. They assert that the portion of their proposed work jurisdiction clause which referred to paste-makeup operations was merely a written incorporation of the oral "agreement." They argue, in substance, that the paste-makeup work was no longer in dispute when the strike was called at the end of November 1957. This argument seems to conflict with the Respondents' above-mentioned admission that there was still "disagreement" over the proposed work jurisdiction clause "at the time of the strike." But in any event, the argument is based upon selected record facts.

The entirety of the record shows that the oral "agreement" was far from definitive or conclusive. The Local's president, who negotiated the oral "arrangement" for the Respondents, testified that "the whole thing was up in the air as to what exactly would end up as the paste-makeup process in [the Respondents'] hands." He also testified, with respect to the effectiveness of the oral "agreement," that until a written contract was actually signed with the Employer the Respondents "were bound by nothing." However, irrespective of the ambiguity and inconclusiveness of the oral "agreement," it is clear that the Employer conceded at the very most to assign to the Respondents' members only paste-makeup work of the reproduction proofs originating in the composing room. In contrast, as shown by the testimony of the Local's president and the language of the Respondents' proposal itself, the Respondents actually wanted the Employer to assign to

their members all paste-makeup, not just that based upon composing room reproduction proofs.[5]

In such circumstances, we find that the Employer did not assign the disputed paste-makeup work to the Respondents and that the Respondents do not have a contractual right to that work.

The Board finds, accordingly, that the Respondents were not and are not lawfully entitled by means prescribed by the statute to force or require the Worcester Telegram to assign paste-makeup work to the Respondents' members rather than to the employees assigned by the Worcester Telegram to perform such work.

E. *Determination of Dispute*[6]

Upon the basis of the foregoing findings and the entire record in this case, the Board makes the following determination of dispute pursuant to Section 10 (k) of the Act.

1. International Typographical Union, AFL-CIO, Members of its Executive Council, and International Typographical Union, AFL-CIO, Local 165, its Scale Committee, and their respective agents are not and have not been lawfully entitled to force or require Worcester Telegram Publishing Company, Inc., to assign the work in dispute to mem-

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[5] Also revealing in reference to the merit of the Respondents' contention that the proposed work jurisdiction clause was merely a written incorporation of the May 1957 oral "agreement" is the fact that the Respondents submitted the proposed contract clause to the Employer almost a year before the parties had reached the oral "agreement" in question.

[6] The Respondents contend that "the case at bar should be excluded from the 10 (k) determinations, for the NLRB cannot meet the mandate of the Court in *N.L.R.B. v. United Ass'n of Journeymen and Apprentices of the Plumbing Industry* (3 Cir.C.A. 1957, 39 LRRM 2629)." . . . (Also commonly known as the *Hake* case). The Respondents have not advanced reasons to support this contention. Moreover, this Board respectfully disagrees with the Court of Appeals opinion in the *Hake* case. See *Longshoremen's and Warehousemen's Union Denali-McCray Construction Company)*, 118 NLRB 109, note 4.

bers of said labor organizations, rather than to that Company's employees of its choice.

2. Within ten (10) days from the date of this Decision and Determination of Dispute, the Respondents shall notify the Regional Director for the First Region of the National Labor Relations Board, in writing, whether or not it accepts this determination of the dispute and whether or not it will refrain from forcing or requiring Worcester Telegram Publishing Company, Inc., to assign the work in dispute to members of the Respondents rather than to employees of the Company's choice by means proscribed by Section 8 (b) (4) (D) of the Act.

Dated, Washington, D. C. SEP 9 1958

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Boyd Leedom, Chairman

.....
Philip Ray Rodgers, Member

.....
Joseph Alton Jenkins, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 5509
International Typographical Union Local 38, AFL-CIO and International Typographical Union Local 165 AFL-CIO and its Scale Committee
Petitioners

v.

National Labor Relations Board
Respondent

PETITION FOR REVIEW OF A DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD

[Filed in Court of Appeals April 29, 1959]

International Typographical Union Local 38, AFL-CIO (hereinafter referred to as "Local 38") and International Typographical Union Local 165, AFL-CIO and its Scale Committee (hereinafter referred to as "Local 165") respectfully petition this Honorable Court to review a decision and order of the National Labor Relations Board entered on April 17, 1959, in a consolidated proceeding entitled *International Typographical Union, AFL-CIO, etc. and Haverhill Gazette Co.* (Board case 1-CB-429) and *International Typographical Union, AFL-CIO, etc. and Worcester Telegram Publishing Co.* (Board Case 1-CB-430), and prays that the order of the Board in the said proceeding be set aside.

This petition is filed pursuant to Section 10(f) of the Labor-Management Relations Act, 1947, 29 U.S.C. § 160 (f) (Supp. 1952) (hereafter referred to as "the Act".) In accordance with Rule 16(1) of the Rules of this Court, the Petitioners state as follows:

1. *The Nature of the Proceeding as to Which Review is Sought.*

The proceeding as to which review is here sought is a proceeding under § 10(b) of the Act. The proceeding was initiated by charges filed by two newspaper publishing companies, the Haverhill Gazette Company (hereafter "the Gazette") (1-CB-429) and the Worcester Telegram Publishing Company, Inc. (hereafter "the Telegram") (1-CB-430). Pursuant to these charges, the General Counsel of the National Labor Relations Board issued complaints, dated February 6, 1958, alleging that the Locals had engaged in unfair labor practices within the meaning of §§ 8(b) (1) (A), 8(b) (1) (B), 8(b) (2) and 8(b) (3) of the Act. The complaint in 1-CB-429 also named as party respondent International Typographical Union and certain named individuals who comprised the Executive Council of the ITU.

The alleged unfair labor practices arise out of negotiations for collective bargaining agreements which Local 38 and Local 165 had with the Gazette and Telegram respectively. It was alleged that respondent local "insisted" on the incorporation of certain provisions into the collective bargaining agreements; it was charged that by this insistence they "caused or attempted to cause" the respective publishers to discriminate against their employees in violation of § 8(b) (3) of the Act and thereby violated § 8(b) (2). Respondents were also charged with thereby restraining and coercing employees in violation of § 8(b) (1) (A). It was further alleged that respondents insisted on the incorporation of a clause in the agreement requiring the foreman to be a member of the union and thereby violated § 8(b) (1) (B). It was further alleged that the respondents "adamantly insisted and insist" on the incorporation of certain provisions into the agreement and thereby violated 8(b) (3) of the Act.

Respondents denied by answer the commission of any unfair labor practices. In the Worcester case a hearing was held before Trial Examiner Reeves R. Hilton on April 2, 3, 4 and 29, 1958. By stipulation the records in certain other proceedings were also incorporated into the proceedings before the Board; the main record in the Haverhill case was from *Alpert v. ITU*, an injunction proceeding pursuant to § 10(j) of the Act, before Judge Aldrich in the District Court for Massachusetts.

On December 17, 1958, Trial Examiner Hilton issued his Intermediate Report finding that Respondents had engaged in certain unfair labor practices and that they had *not* engaged in certain other practices. Exceptions to the Intermediate Report and briefs in support of the exceptions were filed by the General Counsel; the Respondents and the Telegram, as charging party in Case 1-CB-430.

On April 17, 1959 the Board rendered its Decision and Order, in which it adopted the findings, conclusions and recommendations of the Trial Examiner, adding only a footnote, to express its own opinion.

The Board's order requires Respondents to cease and desist from refusing to bargain collectively with the respective publishers, engaging in strike action for certain purposes, "in any other manner causing or attempting to cause" the publishers to discriminate against their employees, etc. or coercing the publishers in their choice of bargaining representatives. Respondents were also ordered to take certain affirmative action.

2. *The Facts and Statutes Upon Which Jurisdiction Is Based.*

Section 10(f) of the Act provides in part that

"Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States

court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in . . . by filing in such Court a written petition praying that the order of the Board be modified or set aside."

The petitioners as parties charged and found by the Board to have committed unfair labor practices are "persons aggrieved" by the order. The unfair labor practices were alleged to have been committed in Haverhill, Mass. and Worcester, Mass., within this Circuit.

3. *The Relief Prayed.*

The Petitioners pray that this Court set aside the decision and order of the Board.

4. *The Points on Which Petitioner Intends to Rely.*

(1) The findings of the Board are not supported by "substantial evidence on the record as a whole" as required by § 10(e) of the Act.

(2) The Board's decision is wrong as a matter of law under § 8(b) (1) (b), § 8(b) (2) and § 8(b) (3). If the contract is illegal under any or all of these sections, the Act is to that extent unconstitutional under the Due Process Clause of the Fifth Amendment of the U. S. Constitution.

(3) The Board's interpretation of the contract proposals is wrong as a matter of law.

(4) The Board engaged in presumptions, on which it based its conclusions, which were beyond its powers under § 10(e) of the Act and which are contrary to the Due Process Clause of the Fifth Amendment to the U. S. Constitution.

(5) By failing to state in the complaint and in later stages of the proceeding whether respondents were charged with "causing" or "attempting to cause" violations of § 8(a) (3), the Board denied respondents adequate opportunity to defend, contrary to the Due Process Clause of the

Fifth Amendment to the U. S. Constitution, the LMRA and Administrative Procedure Act and the Board's Rules and Regulations.

(6) To the extent that the Board's Order interferes with the operation of the International's General Laws and the internal laws of the respective Locals it is beyond the Board's power under the proviso to § 8(b) (1) (A) of the Act; if that proviso is not so interpreted the Act is to that extent unconstitutional under the First Amendment to the U.S. Constitution.

(7) Certain findings of the Board relate to its decision in another proceeding involving an interpretation of § 8 (b) (4) (d) and § 10(k) of the Act. This decision of the Board is erroneous as a matter of law under those sections, and its conclusion in the present case based on that decision is, for that additional reason, erroneous.

(8) Certain conclusions with respect to the bargaining unit are erroneous as a matter of law under § 9(c) of the Act, and were beyond the powers of the Board to declare in the proceedings before it.

(9) The Board's order is so vague and broad that it is beyond its powers under § 10(a) and (c) of the Act; if §§ 10(a) and (c) are interpreted as giving that power the Act is to that extent unconstitutional in view of the Due Process Clause of the Fifth Amendment to the U. S. Constitution.

(10) The Gazette and Local 38 have arrived at an amicable settlement of all differences and have entered into a collective bargaining agreement. The Gazette on May 29, 1958 advised the Board of this settlement, withdrew the charges filed herein and requested the dismissal of the complaint against Local 38 and the ITU. The refusal of the Board to comply with this request was arbitrary and capricious and not in accordance with the policies of the Act.

(11) The Board's decision and order is not reasonably designed to effectuate the policies of the Act.

Respectfully submitted,
s/Robert M. Segal
Robert M. Segal
SEGAL & FLAMM
11 Beacon Street
Boston 8, Mass.
Attorneys for Petitioners

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO PETITION FOR REVIEW AND SET ASIDE ORDER OF THE BOARD AND REQUEST OF THE BOARD FOR ENFORCEMENT OF SAID ORDER

No. 5509

The National Labor Relations Board, by its Associate General Counsel, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. Secs. 151, et seq., as amended by 72 Stat. 945) hereinafter called the Act, files this Answer to the petition for review and set aside the Board order issued against petitioner on April 17, 1959.

1. The Board admits the allegations contained in paragraphs 1 and 2.

2. The Board denies the allegations of error contained in points (1) to (11) of paragraph 4 and with respect to the allegations in regard to the nature of the proceedings, evidence, and findings and conclusions of the Trial Examiner and the Board, the Board prays reference to the certified transcript of the entire record for a full and exact statement of the proceedings before the Board, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law, and Order of the Board, and all other proceedings had in this matter.

3. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act, and, pursuant to Section 10(e) of the Act, respectfully requests this Honorable Court to enforce the Board's order issued against petitioner in the proceeding designated on the records of the Board as Case Nos. 1-CB-429 and 1-CB-430, as stated in the petition.

In support of this request for enforcement, the Board shows that:

1. After due proceedings in said matter, the Board on April 17, 1959, entered its findings of fact and conclusions of law, and issued its order directed to petitioner, its officers, agents, successors and assigns.

2. The same day said decision and order was served upon the petitioner.

3. Pursuant to Section 10(e) and (f) of the Act and Rule 16 (7) of this Court, the Board is certifying and filing with this Court a certified list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceedings before the Board upon which the said order was entered, which includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the order of the Board sought to be enforced.

WHEREFORE, the Board prays that this Honorable Court cause notice of the filing of this Answer and request for enforcement to be served upon petitioner, and that this Court make and enter a decree denying the petition to review and enforcing the Board's order in full.

/s/Thomas J. McDermott
Thomas J. McDermott
Associate General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.,
this 5th day of June, 1959.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 5510

International Typographical Union,
A.F.L.-C.I.O.

Petitioner

v.

National Labor Relations Board

Respondent

PETITION FOR REVIEW OF A DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD

[Filed in Court of Appeals April 29, 1959]

International Typographical Union, A.F.L.-C.I.O. (hereafter referred to as "ITU") respectfully petitions this Honorable Court to review a decision and order of the National Labor Relations Board entered on April 17, 1959, in a consolidated proceeding entitled *International Typographical Union, A.F.L.-C.I.O., etc. and Haverhill Gazette Co.* (Board Case 1-CB-429) and *International Typographical Union, A.F.L.-C.I.O., etc. and Worcester Telegram Publishing Co.* (Board Case 1-CB-430), and pray that the order or the Board in the said proceeding be set aside.

This petition is filed pursuant to Section 10(f) of the Labor-Management Relations Act, 1947, 29 U. S. C. § 160(f) (Supp. 1952) (hereafter referred to as "the Act".) In accordance with Rule 16(1) of the Rules of this Court, the Petitioner states as follows:

1. *The Nature of the Proceeding as to Which Review is Sought.*

The preceeding as to which review is here sought is a proceeding under § 10(b) of the Act. The proceeding was initiated by charges filed by two newspaper publishing companies, the Haverhill Gazette Company (hereafter "the Gazette") (1-CB-429) and the Worcester Telegram Publishing Company, Inc. (hereafter "the Telegram") (1-CB-430). Pursuant to these changes, the General Counsel of the National Labor Relations Board issued complaints, dated February 6, 1958, alleging that the ITU had engaged in unfair labor practices within the meaning of §§ 8(b) (1) (A), 8(b) (1) (B), 8(b) (2) and 8(b) (3) of the Act. The complaint in 1-CB-429 also named as party respondent International Typographical Local 38; the charge in 1-CB-430 also charged International Typographical Union Local 165, its Scale Committee, and certain named individuals who comprised the Executive Council of the ITU.

The alleged unfair labor practices arise out of negotiations for collective bargaining agreements which Local 38 and Local 165 had with the Gazette and Telegram respectively. It was alleged that respondent local "insisted" on the incorporation of certain provisions into the collective bargaining agreements; it was charged that by this insistence they "caused or attempted to cause" the respective publishers to discriminate against their employees in violation of § 8(a) (3) of the Act and thereby violated § 8(b) (2). Respondents were also charged with thereby restraining and coercing employees in violation of § 8(b) (1) (A). It was further alleged that respondents insisted on the incorporation of a clause in the agreement requiring the foreman to be a member of the union and thereby violated § 8(b) (1) (B). It was further alleged that the respondents "adamantly insisted and insist" on the incorporation of

certain provisions into the agreement and thereby violated 8(b)(3) of the Act.

Respondents denied by answer the commission of any unfair labor practices. In the Worcester case a hearing was held before Trial Examiner Reeves R. Hilton on April 2, 3, 4, and 29, 1958. By stipulation the records in certain other proceedings were also incorporated into the proceedings before the Board; the main record in the Haverhill case was from *Alpert* v. *ITU*, an injunction proceeding pursuant to § 10(j) of the Act, before Judge Aldrich in the District Court for Massachusetts.

On December 17, 1958, Trial Examiner Hilton issued his Intermediate Report finding that Respondents had engaged in certain unfair labor practices and that they had *not* engaged in certain other practices. Exceptions to the Intermediate Report and briefs in support of the exceptions were filed by the General Counsel, the Respondents and the Telegram, as charging party in Case 1-CB-430.

On April 17, 1959 the Board rendered its Decision and Order, in which it adopted the findings, conclusions and recommendations of the Trial Examiner, adding only a footnote to express its own opinion.

The Board's order requires Respondents to cease and desist from refusing to bargain collectively with the respective publishers, engaging in strike action for certain purposes, "in any other manner causing or attempting to cause" the publishers to discriminate against their employees, etc., or coercing the publishers in their choice of bargaining representatives. Respondents were also ordered to take certain affirmative action.

2. *The Facts and Statutes Upon Which Jurisdiction Is Based.*

Section 10(f) of the Act provides in part that

"'Any person aggrieved by a final order of the Board

granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in . . . by filing in such Court a written petition praying that the order of the Board be modified or set aside.'"

The petitioner as a party charged and found by the Board to have committed unfair labor practices is a "person aggrieved" by the order. The unfair labor practices were alleged to have been committed in Haverhill, Mass. and Worcester, Mass., within this Circuit.

3. *The Relief Prayed.*

The Petitioner prays that this Court set aside the decision and order of the Board.

4. *The Points on Which Petitioner Intends to Rely.*

(1) The findings of the Board are not supported by "substantial evidence on the record as a whole" as required by § 10(e) of the Act.

(2) The Board's decision is wrong as a matter of law under § 8(b) (1) (b), § 8(b) (2) and § 8(b) (3). If the contract is illegal under any or all of these sections, the Act is to that extent unconstitutional under the Due Process Clause of the Fifth Amendment of the U. S. Constitution.

(3) The Board's interpretation of the contract proposals is wrong as a matter of law.

(4) The Board engaged in presumptions, on which it based its conclusions, which were beyond its powers under § 10(e) of the Act and which are contrary to the Due Process Clause of the Fifth Amendment to the U. S. Constitution.

(5) By failing to state in the complaint and in later stages of the proceeding whether respondents were charged with "causing" or "attempting to cause" violations of

§ 8(a) (3), the Board denied respondents adequate opportunity to defend, contrary to the Due Process Clause of the Fifth Amendment to the U. S. Constitution, the LMRA and Administrative Procedure Act and the Board's Rules and Regulations.

(6) To the extent that the Board's Order interferes with the operation of the International's General Laws and the internal Laws of the respective Locals it is beyond the Board's power under the proviso to § 8(b) (1) (A) of the Act; if that proviso is not so interpreted the Act is to that extent unconstitutional under the First Amendment to the U. S. Constitution.

(7) Certain findings of the Board relate to its Decision in another proceeding involving an interpretation of § 8 (b) (4) (d) and § 10(k) of the Act. This decision of the Board is erroneous as a matter of law under those sections, and its conclusion in the present case based on that Decision is, for that additional reason, erroneous.

(8) Certain conclusions with respect to the bargaining units are erroneous as a matter of law under § 9(c) of the Act, and were beyond the powers of the Board to declare in the proceedings before it; and the conclusion that the respondent ITU was the exclusive bargaining representative of employees in the unit is erroneous as a matter of law under § 9(a) of the Act.

(9) The Board's order is so vague and broad that it is beyond its powers under § 10(a) and (c) of the Act; if §§ 10(a) and (c) are interpreted as giving that power the Act is to that extent unconstitutional in view of the Due Process Clause of the Fifth Amendment to the U. S. Constitution.

(10) The ITU is not chargeable under the Act with any of the alleged unfair labor practices. If the Act is interpreted as making ITU so chargeable it is to that extent

unconstitutional under the Due Process Clause of the Fifth Amendment to the U. S. Constitution.

Respectfully submitted,
s/Gerhard P. Van Arkel

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Gerhard P. Van Arkel
s/George Kaufmann

.....

George Kaufmann
VAN ARKEL AND KAISER
1701 K Street, N. W.
Washington 6, D. C.
Attorneys for Petitioner,
International Typographical Union,
A.F.L.-C.I.O.

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO PETITION FOR REVIEW AND SET ASIDE ORDER OF THE BOARD AND REQUEST OF THE BOARD FOR ENFORCEMENT OF SAID ORDER

No. 5510

The National Labor Relations Board, by its Associate General Counsel, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, et seq., as amended by 72 Stat. 945) (hereinafter called the Act), files this Answer to the petition for review and set aside the Board order issued against Petitioner on April 17, 1959.

1. The Board admits the allegations contained in paragraphs 1 and 2.

2. The Board denies the allegations of error contained in points (1) to (10) of paragraph 4 and with respect to the allegations in regard to the nature of the proceed-

ings, evidence, and findings and conclusions of the Trial Examiner and the Board, the Board prays reference to the certified transcript of the entire record for a full and exact statement of the proceedings before the Board, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law, and Order of the Board, and all other proceedings had in this matter.

3. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act, and, pursuant to Section 10(e) of the Act, respectfully requests this Honorable Court to enforce the Board's order issued against Petitioner in the proceeding designated on the records of the Board as Case Nos. 1-CB-429 and 1-CB-430, as stated in the petition.

In support of this request for enforcement, the Board shows that:

1. After due proceedings in said matter, the Board on April 17, 1959, entered its findings of fact and conclusions of law, and issued its order directed to Petitioner, its officers, agents, successors and assigns.

2. The same day said decision and order was served upon the Petitioner.

3. Pursuant to Section 10(e) and (f) of the Act and Rule 16(7) of this Court, the Board is certifying and filing with this Court a certified list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceedings before the Board upon which the said order was entered, which includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the order of the Board sought to be enforced.

WHEREFORE, the Board prays that this Honorable Court cause notice of the filing of this Answer and request for enforcement to be served upon Petitioner, and that

this Court make and enter a decree denying the petition to review and enforcing the Board's order in full.

/s/Thomas J. McDermott
Thomas J. McDermott
Associate General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.;
this 5th day of June, 1959

[fol. 512]

IN UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

STIPULATION RE RECORD—Filed July 2, 1959

Petitioners in these cases and respondent by their counsel, hereby stipulate and agree that the cross designation of record by the parties is proper and sufficient to enable the Court to determine all the questions presented in petitioners' statements of points.

International Typographical Union Local 38, AFL-CIO, etc., Petitioners in No. 5509, By Robert M. Segal, Segal and Flamm, 11 Beacon Street, Boston 8, Mass.

[fol. 513] International Typographical Union, AFL-CIO, Petitioner in No. 5510, By Gerhard Van Arkel, Van Arkel and Kaiser, 1701 K Street, N.W., Washington 6, D. C.

National Labor Relations Board, Respondent, By Marcel Mallet-Prevost, Assistant General Counsel, 330 C Street, S. W., Washington, D. C.

IN UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

ORDER ON STIPULATION—July 2, 1960

The stipulation of the petitioners and respondent, that the joint consolidated record appendix as designated by the parties is proper and sufficient to enable the Court to determine all the questions presented in petitioners' statement of points, is hereby approved.

By the Court:

Roger A. Stinchfield, Clerk.

[fol. 515] MINUTE ENTRY OF ARGUMENT—December 2, 1960 (omitted in printing).

[fol. 517]

IN UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 5509

INTERNATIONAL TYPOGRAPHICAL UNION LOCAL 38, AFL-CIO AND INTERNATIONAL TYPOGRAPHICAL UNION LOCAL 165, AFL-CIO AND ITS SCALE COMMITTEE, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent.

No. 5510

INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent.

On Petitions to Review and Set Aside and on Cross-Petitions to Enforce an Order of the National Labor Relations Board.

Before Woodbury, Chief Judge, Hartigan, Circuit Judge, and Wyzanski, District Judge.

Robert M. Segal and Gerhard Van Arkel, with whom Arthur J. Flamm, Henry Kaiser, George Kaufman, Segal & Flamm, Van Arkel & Kaiser and Dickstein, Shapiro & Galligan were on brief, for petitioners.

Melvin Pollack, Attorney, with whom Stuart Rothman, General Counsel, Thomas J. McDermott, Associate General Counsel, and Marcel Mallet-Prevost, Assistant General Counsel, were on brief, for respondent.

[fol. 518]

OPINION—May 10, 1960

Woodbury, Chief Judge. The Haverhill Gazette Company and the Worcester Telegram Publishing Company, Inc., Haverhill and Worcester or collectively the employers hereinafter, are and for years have been engaged in the business of publishing daily newspapers in their respective Massachusetts communities. Both subscribe to interstate news services, advertise nationally sold products and enjoy annual gross revenues from their publishing operations in excess of $500,000. For a great many years the composing room employees, that is to say the printers, of Haverhill have been represented by Local 38 and the composing room employees of Worcester have been represented by Local 165 of International Typographical Union, AFL-CIO. Pre-existing contracts between Haverhill and Worcester and the local unions representing their composing room employees having in each instance long expired, and in each instance attempts to negotiate new agreements having come to naught, strikes of the composing room employees of both employers ensued. At this juncture, on separate charges filed by Haverhill and Worcester, General Counsel for the National Labor Relations Board on February 6, 1958, filed separate complaints against the parent union, ITU hereinafter, and the local involved in each situation[1] alleging that

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[1] Included in the complaint issued on Worcester's charge are also the Executive Council of ITU and the Scale Committee of Local 165.

the respondents had been and were engaging in various acts and conduct in violation of the Labor Management Relations Act, 1947, 29 U.S.C. § 141 *et seq.*, 61 Stat. 136, as amended. The cases were consolidated for hearing by order of the Regional Director and hearings in the Worcester case were held in Worcester by a trial examiner in April, 1958. At those hearings evidence was introduced and counsel stipulated for the incorporation in the record [fol. 519] in that case of the testimony of the president of ITU adduced in the New York Mailers Case, so called, Board Nos. 2-CB-4967, 2-CB-1769 and 2-CB-1807, and of the testimony in a proceeding under § 10(k) of the Act between ITU and Worcester. Counsel also stipulated that the record in a proceeding in the United States District Court for the District of Massachusetts for an injunction under § 10(j) of the Act entitled *Alpert* v. *ITU*, 161 F. Supp. 427 (D.C. Mass. 1958), should constitute the record in the Haverhill case.

On the evidence before him in both cases the trial examiner found that the respondents had engaged and were engaging in some of the unfair labor practices charged against them in the complaints but had not and were not engaging in others, and recommended an order which he thought appropriate to his findings. Exceptions to the trial examiner's intermediate report, with supporting briefs, were filed by the respondents but the Board, with an exception to be noted hereinafter, affirmed the trial examiner and adopted his findings, conclusions and recommendations as its own. The respondents thereupon filed a petition in this court to review that order and set it aside and the Board countered with a petition for enforcement of its order.

There is little dispute over the facts, and the facts and issues in both cases are essentially the same. In both cases protracted negotiations for new collective bargaining agreements, in which officers of ITU participated with representatives of the local unions and officials of the New England Daily Newspaper Association, Inc., participated with the employers, finally broke down and in consequence late in November, 1957, the locals with ITU sanction and approval called the composing room employees of both

employers out on strike. In each instance the bones of contention were much the same. The representatives of [fol. 520] the local unions backed by the representatives of ITU adamantly insisted upon the inclusion of three clauses in any new contract and the representatives of the employers as adamantly insisted that the clauses were illegal and that no contract would be entered into in which the clauses were included. Moreover, regarding inclusion of the clauses as "key" issues both the employers' and the unions' representatives declined seriously to explore economic issues such as hours, overtime, pensions, summer holidays,[2] etc., until agreement should be reached on the clauses they regarded as crucial.

The three clauses on which the negotiators deadlocked were the jurisdiction, foreman[3] and general laws clauses which may as well be briefly described at this point.

The jurisdiction clause, on which the unions in both instances insisted, covered persons engaged in a number of new processes and operations, in addition to those covered by the jurisdiction clauses of the old contracts, which new processes and operations the unions considered substitutes for the processes and operations traditionally performed in the composing room by printers but which, with two exceptions, the employers were not using and did not contemplate installing in their plants.[4] The foreman clause provided that the composing room foreman, who had the power to hire, fire and process grievances, had[5] to be a mem-

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[2] During the negotiations Worcester and Haverhill with the approval of the unions voluntarily granted their composing room employees an increase in wages.

[3] Haverhill did not consider the foreman clause a "key" issue.

[4] The new jurisdiction clause covered "paste-makeup" operations which at Worcester's plant had for many years been performed by artists who did not work in the composing room and had never been represented by Local 165. And it covered an operation or process involving the use of tape which Haverhill was using only experimentally.

[5] The employers did not object to a union man being foreman. Indeed their foremen were union men. Their objection was to the requirement that their foreman *had* to be members of the union.

[fol. 521] ber of the union although he would be exempt under certain circumstances from union discipline for activities on behalf of management. The general laws clauses provided that the General Laws of the International Typographical Union in effect on January 1, 1956 (or in another version at the time a contract was signed), if not in conflict with state or federal law, should govern relations between the parties on those subjects concerning which no provision was made in the contracts.

The trial examiner found that the unions were genuinely desirous of securing contracts with Worcester and Haverhill but that the evidence clearly showed that they insisted upon the acceptance of the jurisdiction, foreman and general laws clauses as written as a condition precedent to the execution of any collective bargaining agreements. But, believing the clauses illegal, the examiner concluded that by insisting that the employers agree to them the unions had refused to bargain collectively with the employers in violation of § 8(b)(3) of the Labor Management Relations Act, 1947.[6] He also found that the primary object or purpose of the strikes called by the unions and their agents against the employers was to force the latter to accede to the unions' demand for inclusion of the three clauses he thought illegal and from that finding concluded that the unions had violated § 8(b)(2)[7] of the Act in that they had

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[6] "It shall be an unfair labor practice for a labor organization or its agents—

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"(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a) of this title; . . . ."

[7] "It shall be an unfair labor practice for a labor organization or its agents—

• • •

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) . . . ," which in pertinent part provides:

"It shall be an unfair labor practice for an employer—

• • •

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: . . . ."

[fol. 522] attempted to cause the employers to encourage union membership by discrimination in regard to hire, tenure, terms or conditions of employment. As to the foreman clause, he thought they had also attempted to coerce the employers in the selection of their representatives for the purpose of adjusting grievances in violation of § 8(b)(1)(B) to be considered hereinafter.

The Jurisdiction Clause

The Board neither agreed nor disagreed with the trial examiner's conclusion that the unions had violated § 8(b)(2) by striking for the inclusion of the jurisdiction clause in future collective bargaining agreements. It said in a footnote to its decision that while it agreed with the trial examiner that the unions had violated § 8(b)(2) by striking to force the employers to accede to the unions' demands for the illegal foreman and general laws clauses, it found it "unnecessary to pass upon his finding that the Respondents violated Section 8(b)(2) by so striking also for the jurisdiction clause." Our consideration of this clause is, therefore, narrowed to the question whether by insisting upon its inclusion in the future contracts the unions refused to bargain collectively in violation of § 8(b)(3).

There is no dispute that in both cases the jurisdiction clauses on which the unions insisted covered not only work which the unions and the employers had regarded in the past as composing room work, but also a number of job processes and operations which the employers had not and did not contemplate installing in their plants.[8] In the case [fol. 523] of Worcester it also covered, as previously noted, paste-makeup work which for years had been done by artists who did not work in the composing room and who had never been included in the composing room bargaining unit.[9]

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[8] Worcester offered to include a clause in the new contract to the effect that it would not introduce certain new processes during the life of the contract but the unions rejected the offer.

[9] In the § 10(k) proceeding referred to earlier in this opinion the Board held that Local 165 and its agents were not lawfully entitled to force or require Worcester to assign paste-makeup work to a member of the union rather than to an employee of its own choice.

Both employers had for years recognized their composing room employees as forming appropriate units for collective bargaining purposes, but there had never been a Board determination to that effect. Nevertheless, the trial examiner, the Board concurring, had no difficulty in finding that the composing room employees of the employers in the classifications covered by the past agreements between the unions and the employers, subject to the statutory exclusion of foremen, constituted appropriate units for the purpose of collective bargaining within the meaning of § 9(a) of the Act. And it was similarly found that the respective unions represented a majority of the employees in those units. But, noting that in general the Board in the past had refused to include nonexistent or future job operations in the units it considered appropriate for the purposes of collective bargaining, it was determined by the trial examiner, the Board affirming, that units including nonexistent or future job operations upon which the unions insisted in their negotiations for future contracts were inappropriate. Hence it was determined that by insisting upon bargaining only for inappropriate units the unions had not fulfilled their obligation to bargain as required by § 8(b)(3) of the Act.

The Board's power to determine the units appropriate for collective bargaining is broad. "The issue as to what unit is appropriate for bargaining is one for which no absolute rule of law is laid down by statute, and none should [fol. 524] be by decision. It involves of necessity a large measure of informed discretion, and the decision of the Board, if not final, is rarely to be disturbed." *Packard Co. v. Labor Board*, 330 U.S. 485, 491 (1947).

The unit on which the unions insisted is not a positively illegal unit, as for instance one including supervisory employees. Moreover, we cannot doubt that in a proper proceeding the Board in the exercise of its broad power could either include or exclude future or non-existent job operations from the unit it determined appropriate for collective bargaining purposes. Thus this is not a case in which the unions are pressing for an obviously inappropriate unit. It may very well be sound policy for the Board not to include non-existent or future job classifications in the units

it determines appropriate for collective bargaining purposes. It may be wiser to wait for the benefit of experience with new processes and operations rather than to attempt to anticipate the skills that may be required to carry them out. Moreover, inclusion of future or non-existent job operations in a bargaining unit sets the stage for future proceedings under § 10(k) of the Act to settle jurisdictional disputes. Although the Board may think the unit on which the unions insisted inappropriate, it was not illegal, for a unit including future or non-existent jobs is neither unlawful *per se* nor obviously and clearly inappropriate.

The question is whether by insisting on the broader unit the unions in effect were refusing to bargain collectively with the employers. To paraphrase what this court said in *NLRB* v. *Reed & Prince Mfg. Co.*, 205 F.2d 131, 134 (C.A. 1, 1953), the question is whether it is to be inferred from the totality of the unions' conduct that they went through the motions of negotiation as an elaborate pretense with no sincere desire to reach an agreement if possible, or that they bargained in good faith but were [fol. 525] unable to arrive at an acceptable agreement with the employers. This question, however, the Board itself answered when it adopted the trial examiner's finding that the unions were desirous of securing contracts with the employers. It may be that the unions were uncompromising in their jurisdictional demands, but under § 8(d) of the Act, quoted in footnote 12, *infra*, the obligation to bargain collectively "in good faith" does not compel either party to agree to a proposal or require the making of a concession. See *Labor Board* v. *American Insurance Company*, 343 U.S. 395 (1952). Although the unions may have insisted rather stubbornly in their demand for the jurisdiction clause, we have little difficulty, in view of the finding that they sincerely desired contracts, in concluding that the unions by their insistence on the clause did not refuse to bargain collectively as required by § 8(b)(3) of the Act.

The Foreman Clause

This clause as proposed and insisted upon by the unions provides: "The hiring, operation, authority and control

of each composing room shall be vested exclusively in the office through its representative, the foreman, who shall be a member of the Union. In the absence of the foreman, the foreman-in-charge shall so function.

"All orders, instruction, reprimands, etc., must be given through the foreman who shall have the right to assign men to any composing room work he deems necessary." [10]

The trial examiner and the Board found that by insisting upon this clause the unions refused to bargain in good faith and that by striking in support of their insistence upon the clause the unions had undertaken to restrain or coerce [fol. 526] the employers in the selection of their representatives for the adjustment of grievances in violation of § 8(b)(1)(B) of the Act.[11] The reasoning by which the trial examiner and the Board reached this conclusion is fragmentary and far from clear. Indeed, the trial examiner's intermediate report, which the Board affirmed, consists of a lengthy recapitulation of the evidence interspersed here and there with a finding of fact followed by lengthy conclusions summarized in brief paragraphs. This technique of decision has not only rendered our consideration of this case exceedingly difficult and needlessly time consuming but has also served better to conceal than to disclose the Board's reasoning. Nevertheless, we agree with the Board's conclusions with respect to the foreman clause.

There can be no doubt that the foreman's duties necessarily included participation in the adjustment of employee grievances. Hence, by insisting that the foremen must be union members, the unions were restraining and coercing the employers in the selection of their representatives for grievance adjustment purposes. Not only would the clause

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[10] In the Worcester case the clause contained the further provision:

"The Union shall not discipline the foreman for carrying out written instructions of the publisher or his representatives authorized by this Agreement."

[11] "It shall be an unfair labor practice for a labor organization or its agents—

• • •

"(1) to restrain or coerce . . . (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment or grievances; . . . ."

as proposed by the unions limit the employers' choice of foremen to union members, but it would also give the unions power to force the discharge or demotion of a foreman by expelling him from the union.

It seems to us equally clear, however, that by insisting on the foreman clause as they wanted it, the unions violated § 8(b)(2) of the Act quoted in material part in footnote 7, *supra*, for the effect of the clause would be to cause the employers to discriminate in favor of union men in appointing their foremen thereby encouraging aspirants [fol. 527] for that position to join the union. And § 8(b)(2) covers all situations in which the union seeks to cause the employer to accept conditions under which any non-union employee or job applicant will be unlawfully discriminated against. *NLRB* v. *National Maritime Union*, 175 F.2d 686, 689 (C.A. 2, 1949). Thus we believe that by striking for the foreman clause the unions violated § 8(b)(2) of the Act as well as § 8(b)(1)(B).

And we think that in holding out for the clause the unions also refused to bargain collectively in violation of § 8(B)(3). There may be cases in which uncompromising insistence upon a legal contract clause is so utterly unreasonable under the circumstances as to warrant an inference of bad faith. The problem is to reconcile the duty to "confer" in "good faith" imposed by § 8(d) of the Act[12] that is to say with the sincere and honest desire to reach an agreement if possible, and the right conferred in that section, perhaps even stubbornly, to refuse to agree to a proposal or to make a concession with respect to a contract clause. However, to hold that good faith is a defense to the charge of refusal to bargain when the contract provision insisted upon is illegal *per se* is to put a premium on ignorance of the law

[12] "For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession; . . . ."

or blind intransigency. Thus, as to this clause, the unions are not saved by the finding that they negotiated with the genuine desire to arrive at a contract.

It is true that in the Haverhill case the foreman clause was not a key issue. And it is also true that after the [fol. 528] strikes the unions withdrew their demands for the clause. But there is no assurance that their demands for inclusion of the clause will not be renewed. Since bargaining demands for, and a strike aimed at forcing an employer to accede to, the inclusion of an obviously illegal provision in a collective bargaining contract justify enforcement of a cease and desist order, see *NLRB* v. *National Maritime Union*, 175 F.2d 686, 689 (C.A. 2, 1949), we think the Board is entitled to enforcement of its order so far as this clause is concerned.

The General Laws Clause

There can be no doubt, indeed it is not seriously disputed, that several of the provisions of ITU general laws, if literally applied, would import illegal union security provisions into any collective bargaining agreement into which they might be incorporated. The question is whether the "not in conflict with law" provision, and the provision that the contract alone shall govern relations between the parties as to all matters concerning which it makes any provision, of the proposed contract clause with respect to the inclusion of the ITU general laws serves to immunize the proposed contract from the illegality of many of the general laws of ITU.

The provision that contract terms alone shall govern with respect to all matters as to which it makes any provision does not call for extended consideration, for it is clear that the local unions would not, and indeed could not, under ITU rules and regulations, enter into any collective bargaining agreement without ITU approval, and ITU's insistence that "Union language must be taken" with respect to its general laws demonstrates that ITU would not approve any contract provision substantially in conflict with its laws. The "not in conflict with law" provision or

[fol. 529] savings clause, as it is sometimes referred to, requires more lengthy discussion.[13]

The United States Court of Appeals for the Second Circuit has answered in the negative the question of the immunizing effect of a not in conflict with law provision comparable to the one in the case at bar. In *Red Star Express Lines v. NLRB*, 196 F.2d 78, 81 (C.A. 2, 1952), that court, per Judge A. N. Hand, Judge L. Hand dissenting, took the view that the question was not merely whether under principles of contract law a "savings clause" addendum to a contract containing an illegal union security clause would contractually negative that clause. It took the view that the question was more whether the savings clause would have the effect of preventing the coercion which would otherwise follow from inclusion of the illegal clause in the contract.[14] As to the effect of the savings clause, the court accorded weight to the view of the Board. It noted that entering into a contract containing an illegal union security clause would constitute an unfair labor practice because the existence of such an agreement without more (whether enforced or not), would tend to encourage union membership. The court then said that the Act required that employees should be free to choose between joining and refusing to join a union and forbad any form of interference with that choice, and from this concluded that a contract containing an illegal union security clause, even though modified by an addendum in the form of a provision excluding whatever contract clauses might be illegal, would not eliminate the coercive effect of the contract. "For," the court said, "the [fol. 530] question is not only whether under principles of contract law the addendum would contractually negative the illegal union security clauses, but whether it would have

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[13] The unions insist that in this case the clause should be called an "exclusionary clause." We see no significant difference in the terminology to be employed. We are not deciding this case on an issue of semantics.

[14] We perceive no reason why the coercive effect of the illegal clauses would be lessened if, as in this case, they are incorporated by reference into the contract, rather than written into the contract itself.

the effect of preventing the coercion that would otherwise follow" from the inclusion of such clauses in the body of the contract. The court then said: "The Board found it would not have such an effect 'because it fails to specify which, *if any*, clauses were to be suspended.' In our opinion the Board was entitled to adopt this view as a matter of sound policy and reasonable interpretation. The vague language of the addendum would not help the ordinary employee to understand that the union security clause was no longer binding." As explained in *NLRB* v. *Gaynor News Co.*, 197 F.2d 719, 723, 724 (C.A. 2, 1952), the court's reasoning in the *Red Star Express Lines* case was "that an employee cannot be expected to predict the validity or invalidity of particular clauses in the contract, and will feel compelled to join the union where a union-security clause of questionable validity exists, if only as a hedging device against a possible future upholding of the clause." In accord see *NLRB* v. *Gottfried Baking Co.*, 210 F.2d 772, 780 (C.A. 2, 1954).

The question is not free from doubt. Nevertheless, in spite of perhaps some inferences to the contrary to be drawn from *Honolulu Star-Bulletin, Ltd:* v. *NLRB*, 274 F.2d 567 (C.A. D.C. 1959), we agree with both the reasoning and the result of the cases from the Court of Appeals for the Second Circuit cited above.

The question now arises whether a union is to be found guilty of unfair labor practices when it bargains for and strikes to coerce an employer to consent to the inclusion in a collective bargaining agreement of clauses of honestly disputable validity at the time of the union action. We think this question must be answered in the affirmative.

It is true that the legality or illegality of the unions' [fol. 531] conduct at the bargaining conferences and in calling the strikes, so far as the General Laws clause is concerned, can only be determined by subsequent action by the Board followed by proceedings in a court of appeals or perhaps in the Supreme Court of the United States. But, as this court pointed out in a comparable situation in *NLRB* v. *Local 404, etc.*, 205 F.2d 99, 102, 103 (C.A. 1, 1953), "this in itself presents no unique situation." The point in that case as in this is simply that the unions were acting

at their peril, that is to say, at the risk of an enforcement order, when they sought to compel the employers to submit to their demand for inclusion of the ITU general laws in the collective bargaining contracts under negotiation.

ITU's contention that it is not a proper party to this proceeding, and so that the Board erred in finding that it had committed any unfair labor practices, deserves only brief consideration. There can be no doubt whatever that officers of ITU actively participated with officers of the local unions in negotiating for contracts with both Haverhill and Worcester. Nor can there be any doubt that under ITU rules and regulations any contracts negotiated by the local unions had to be submitted to and approved by an agency of ITU. Furthermore, the evidence is clear that in both cases the strikes were sanctioned and approved by high officers of ITU. We think it clear that under these circumstances ITU, and in the Worcester case its Executive Council, were proper parties to this proceeding and were properly chargeable with the unfair labor practices found to have been committed by the locals. See *American Newspaper Publishers Ass'n* v. *NLRB*, 193 F.2d 782, 804, 805 (C.A. 7, 1951), *cert. denied* on this point 344 U.S. 812 (1951).

The order entered by the Board, in effect, requires both respondents to cease and desist from engaging in action with respect to Haverhill and Worcester that would violate sections 8(b)(1)(B), 8(b)(2), and 8(b)(3) of the Act *in* [fol. 532] *any manner*. See *Communications Workers etc. et al.* v. *N.L.R.B.*, decided by the Supreme Court of the United States May 2, 1960. We consider this order to be excessively broad. It is true that this court upheld an order forbidding a union to engage in certain conduct with respect to any other employer. *NLRB* v. *Springfield Building & Const. Trades Council*, 262 F.2d 494 (C.A. 1, 1958). In that case, however, the unions were told what the proscribed conduct was. As the Board's order now stands any alleged violation of the aforementioned sections would be tried in this court in the first instance in a contempt proceeding, no matter how unrelated it may be to the earlier illegal activity engaged in by the union. And, "the authority conferred on the Board to restrain the practice which it has found the employer (union) to have committed is not an authority

to restrain generally all other unlawful practices which it has neither found to have been pursued nor persuasively to be related to the proven unlawful conduct." *Labor Board v. Express Publishing Co.*, 312 U.S. 426, 433 (1941). Accordingly, we restrict the Board's order to the specific practices found to be unlawful, or practices persuasively related thereto.

A decree will be entered enforcing the Order of the Board as modified in accordance with this opinion.

[fol. 533]

IN UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

DECREE—May 10, 1960

This cause came on to be heard upon the petitions for review and cross-petitions for enforcement of an order of the National Labor Relations Board, and was argued by counsel.

Upon consideration whereof, It is now, to wit, May 10, 1960, here ordered, adjudged and decreed as follows: The order of the National Labor Relations Board of April 17, 1959, as modified herein, is hereby affirmed and enforced.

It is ordered that in each of the paragraphs in said order marked I(a)(1) and II(a)(1) the word "jurisdiction" be stricken, and that the words "persuasively related" be substituted for the word "other".

It is further ordered that in each of the paragraphs in said order marked I(a)(3) and II(a)(3) the words "persuasively related" be substituted for the word "other".

It is further ordered that paragraphs I(a)(4) and II(a)(4) in said order be stricken in their entireties and that the following paragraphs be substituted respectively therefor:

[fol. 535] I . . . (a) . . . "(4) Restraining or coercing Haverhill Gazette Company in the selection of its representatives for the purpose of collective bargaining or the adjustment of grievances by insistence upon acceptance of the Respondent Unions' foreman clause or in any persuasively related manner."

II . . . (a) . "(4) Restraining or coercing Worcester Telegram Publishing Company, Inc., in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances by insistence upon acceptance of the Respondent Unions' foreman clause or in any persuasively related manner."

It is further ordered that the words "persuasively related" be substituted for the word "other" in the next to the last indented paragraph in each of the two notices appended to said order.

It is further ordered that the following paragraph be substituted for the last indented paragraph in the first notice appended to said order:

"We Will Not restrain or coerce Haverhill Gazette Company in the selection of its representatives for the purpose of collective bargaining or the adjustment of grievances by insistence upon acceptance of a clause requiring that the composing room foreman be a union member or in any persuasively related manner."

It is further ordered that the following paragraph be substituted for the last indented paragraph in the second notice appended to said order:

[fol. 537] "We Will Not restrain or coerce Worcester Telegram Publishing Company, Inc., in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances by insistence upon acceptance of a clause requiring that the composing room foreman be a union member or in any persuasively related manner."

It is still further ordered that the respondents herein notify the Regional Director for the First Region in writing within fifteen (15) days of this Decree of the steps they have taken respectively to comply with said order as herein modified; and affirmed and enforced.

By the Court:

Roger A. Stinchfield, Clerk.

Approved:

Peter Woodbury, Ch. J.

Thereafter, on June 3, 1960, petitioners in both cases filed a petition for rehearing.

Thereafter, on June 10, 1960, an order was entered in these two cases denying the petition for rehearing.

[fol. 539] Thereafter, on June 15, 1960, the decree in these two cases was stayed until further order of Court.

Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 540]

SUPREME COURT OF THE UNITED STATES

No. 340, October Term, 1960

INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, et al.,
Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD.

ORDER ALLOWING CERTIORARI—November 7, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted. The case is transferred to the summary calendar and set for argument immediately following No. 339.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.